S. HRG. 98-930

WATER RESOURCES DEVELOPMENT ACT OF 1983

HEARING

BEFORE THE

COMMITTEE ON ENERGY AND NATURAL RESOURCES UNITED STATES SENATE

NINETY-EIGHTH CONGRESS

SECOND SESSION

ON

S. 1739

A BILL TO AUTHORIZE THE U.S. ARMY CORPS OF ENGINEERS TO CONSTRUCT VARIOUS PROJECTS FOR IMPROVEMENTS TO RIVERS AND HARBORS OF THE UNITED STATES, AND FOR OTHER PURPOSES

APRIL 9, 1984

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WATER RESOURCES DEVELOPMENT ACT OF 1983

MONDAY, APRIL 9, 1984

U.S. SENATE,
COMMITTEE ON ENERGY AND NATURAL RESOURCES,
Washington, DC.

The committee met, pursuant to notice, at 2 p.m., in room SD-366, Dirksen Office Building, Hon. Don Nickles, presiding.

Present: Senators Nickles, Wallop, and Evans.

Also present: Gary Ellsworth, deputy chief counsel for natural resources; Russell R. Brown, professional staff member; D. Michael Harvey, chief counsel for the minority; and Craig Gannett, counsel for the minority.

OPENING STATEMENT OF HON. DON NICKLES, A U.S. SENATOR FROM THE STATE OF OKLAHOMA

Senator NICKLES. Good afternoon.

The hearing we have today before the Senate Committee on Energy and Natural Resources is to take testimony on those portions of Senate bill 1739, the Water Resources Development Act of 1983, which has been referred to this committee.

Pursuant to the unanimous-consent agreement, we will take testimony on section 217 as it relates to coal slurry pipelines, section 224, fish and wildlife mitigation for federally constructed water resource projects, title VI, which establishes cost-sharing requirements for federally developed water resource or related land resource projects, and section 701(b)(10) irrigation development at the Gregory County pump storage project in South Dakota, also on title IX, which establishes the National Board of Water Policy.

I appreciate the interest that others have shown on this legislation. It is a very comprehensive piece of legislation.

I'm also hopeful that with the time constraints that we have that we will be able to move this hearing fairly quickly.

I'm pleased that Senator Wallop is here. Do you have any formal comments?

Senator WALLOP. Mr. Chairman, I do. And with your indulgence, it's not a long statement, but I would like to give it.

Senator NICKLES. Certainly.

STATEMENT OF HON. MALCOLM WALLOP, A U.S. SENATOR FROM THE STATE OF WYOMING

Senator WALLOP. I am pleased that the committee has been given an opportunity to review certain provisions in the bill coming

within the scope of our Energy and Natural Resources Committee's jurisdiction.

Clearly, this omnibus water development authorization bill, authorizing some $8 billion for water projects across the Nation, is of obvious importance to the Nation. In most respects it is long overdue. In some respects, the policy it sets is extremely bad.

Of particular concern to me are the cost-sharing provisions in S. 1739. Under the bill, as reported from the Environment and Public Works Committee, a new cost-sharing program would be instituted which sets up a formula of funding contributions for non-Federal shares which are arbitrary, untenable, and unacceptable, for the most part.

The apparent requirement for a 35-percent non-Federal support for irrigation, for example, ignores the irrigator's ability to pay, and sets up competition between the projects and the States.

Fixed percentage repayments raise the question of whether under cost-sharing by fixed formula, wealthy regions of the Nation will benefit while poor regions may suffer.

Up front cash contributions of 5 percent of the project cost during construction may be beyond the ability of the State and local sponsors to borrow, and, therefore, needed projects are never built.

While I believe it is clear we now need some form of unified national policy for sharing water project costs among the Federal Government, State and local governments, and direct users, such a policy should be tenable.

Although State and local capabilities to finance water resources development have matured considerably over the past 20 years, some sectors of the economy, such as ranching and agriculture in the West, have been hard hit in recent years. Therefore, although efficiency of public investment should be a basic objective in our water resources development policy, it should not be the sole or dominant concern.

That's why I feel the President's cost-sharing proposal is the one which should be in S. 1739 in lieu of the percentage cost-sharing formula proposed by the bill.

The President's cost-sharing proposal would be carried out on a case-by-case basis. All Federal water development agencies would be able to seek new partnership arrangements with the States, and other non-Federal interest.

Although project beneficiaries would be picking up most of the project costs, such as planning, and mandatory interest on repayment, this approach could give non-Federal entities input on project selection, design and, hopefully, operation. In addition, payment-in-kind as a non-Federal contribution by non-Federal beneficiaries would be allowed.

Clearly, such a cost-sharing policy would reduce the Federal role in direct project financial involvement. However, it would do so in a manner that will allow these projects to be built, or repaired, as the case might be.

For these reasons, I would urge the members of this committee to consider amending the bill to substitute the President's cost-sharing language for the percentage formula presently proposed in S. 1739.

Another provision in the bill which gives me severe heartburn is title IX. Section 901 of S. 1739 establishes a new National Board of Water Policy, and gives it independent agency status.

The very last thing we in the West need is a Federal agency, establishing Federal water policy under binding rules, principles, and standards over water.

For one thing, this provision creates another Federal bureaucratic entity with functions duplicating existing law and existing Federal activities. Moreover, it flies in the face of the President's policy of State primacy in water rights, resulting from less interference from the Federal Government in water resources management.

The Cabinet Council on Natural Resources and Environment is the existing, and the appropriate executive forum for any water policy the Federal Government may need to formulate.

The Water Resources Planning Act is still good law.

I understand Secretary Clark is taking a strong leadership position on all Federal water policy matters as a member of the Cabinet Council on Natural Resources and Environment.

I strongly oppose the provisions in this bill, because it undermines State water rights and the ability of States to manage their water resources.

We do not need regulation of water by the Federal Government. This is precisely where the creation of such a Federal Water Resources Planning Board will lead. We need less Federal regulation and more cooperation and coordination between the States and the Federal Government.

The States are the entities with the expertise in water resources management.

If the Federal Government has an internal problem in being unable to formulate a common policy with respect to water resources, then the solution is not the creation of a separate Federal entity.

The solution is sitting down and focusing on the problems and coming up with proposed solutions internally.

For these reasons, Mr. Chairman, I believe this provision should be deleted from the bill.

Lastly, I am concerned that the new policy for automatic mitigation of damages to fish and wildlife, and the enhancement of damages to fish and wildlife resources at water projects constructed by the corps of Engineers up to $7.5 million per project.

This provision allows the Corps to acquire for future condemnation water on projects not yet started. If such a policy is to be endorsed by the Congress, at the very least, the Federal Government should have to acquire water pursuant to State substantive and procedural law.

This custom of deference to State water law has been congressional policy for over 100 years, and I see no good reason for changing it now, and I see plenty of reason for not changing it.

I, therefore, propose that section 224 be amended along the lines of section 8 of the 1902 Reclamation Act to put language in the bill which coordinates corps mitigation policies with those of the Bureau of Reclamation.

Mr. Chairman, I thank you for indulging me in that, but these are, in our part of the world, rather serious and important problems.

Senator NICKLES. They are important issues, and I appreciate the attention that you've given it. And I'm sure that others with an interest will take note and possibly take heed.

Senator Hecht, did you have any opening comments that you would wish to make?

Senator HECHT. No. But I would say that Senator Wallop's comments were very apropos to my own State of Nevada.

Thank you.

Senator NICKLES. Thank you, Senator Hecht.

The chairman, Senator McClure, could not attend today but has asked that his statement be made a part of the record.

[The prepared statement of Senator McClure follows:]

OPENING STATEMENT OF SENATOR JAMES A. McCLURE

REGARDING S. 1739 -- WATER RESOURCES DEVELOPMENT ACT OF 1983

APRIL 9, 1984

GOOD AFTERNOON. AT THE OUTSET I WOULD LIKE TO COMMEND SENATOR ABDNOR, SENATOR STAFFORD AND OTHER MEMBERS OF THE ENVIRONMENT AND PUBLIC WORKS COMMITTEE FOR THE EXCELLENT JOB THEY HAVE DONE IN ATTEMPTING TO ADVANCE THE DEVELOPMENT OF WATER RESOURCES NATIONWIDE. S. 1739 IS AN IMPORTANT ELEMENT OF THAT EFFORT. IT IS MY HOPE THAT CONSIDERATION OF PORTIONS OF THE BILL BY THIS COMMITTEE DURING THE WEEK OF APRIL 23RD WILL FACILITATE EVENTUAL CONSIDERATION BY THE SENATE.

DURING THE HEARING TODAY, WE WILL RECEIVE TESTIMONY ON THOSE SECTIONS OF THE BILL WHICH HAVE BEEN REFERRED TO THE COMMITTEE. THEY INCLUDE TITLE VI REGARDING COST-SHARING AND TITLE IX ESTABLISHING A NEW NATIONAL WATER POLICY BOARD. WHILE I GENERALLY SUPPORT THE OVERALL PROVISIONS OF S. 1739, THESE TWO TITLES CAUSE ME SOME CONCERN. AT FIRST READING, TITLE VI APPEARS TO BE INCONSISTENT WITH THE PRESIDENT'S RECENTLY ANNOUNCED COST-SHARING POLICY ENUNCIATED IN HIS LETTER TO SENATOR LAXALT. I AM ALSO CONCERNED ABOUT THE NECESSITY FOR A NEW WATER POLICY BOARD IN LIGHT OF THE CURRENT COORDINATION WHICH OCCURS IN THE CABINET COUNCIL ON ENERGY AND THE ENVIRONMENT. I LOOK FORWARD TO HEARING THE VIEWS OF THE ADMINISTRATION WITNESSES ON THESE TWO ITEMS.

IN ADDITION, I HOPE THE ADMINISTRATION WILL PROVIDE FOR THE RECORD ITS COMMENTS ON OTHER PORTIONS OF THE BILL WHICH ALTHOUGH NOT FORMALLY REFERRED TO THE COMMITTEE ARE OF INTEREST. AS EXAMPLES I WOULD CITE SECTION 301 REGARDING THE FT. TOULOUSE NATIONAL HISTORIC SITE, SECTION 308 REGARDING THE TRUST TERRITORY, AND SECTION 324 REGARDING THE EVERGLADES NATIONAL PARK. BECAUSE THE COMMITTEE MUST COMPLETE ACTION ON THIS BILL BY APRIL 27, 1984, IT WILL BE NECESSARY FOR THE ADMINISTRATION TO RESPOND TO THE COMMITTEE'S QUESTIONS AND REQUESTS FOR VIEWS IN AN ESPECIALLY PROMPT FASHION, BUT IN NO EVENT LATER THAN MONDAY, APRIL 16, 1984.

IN THAT VEIN, I WOULD LIKE TO THANK THE ADMINISTRATION WITNESSES WHO HAVE AGREED TO TESTIFY HERE TODAY ON VERY SHORT NOTICE. I WOULD ALSO LIKE TO THANK BILL GIANELLI FOR HIS MANY YEARS OF FINE GOVERNMENT SERVICE AND WISH HIM WELL IN HIS NEW ENDEAVORS IN THE PRIVATE SECTOR.

Senator NICKLES. Our first witnesses, if possible, we would like to have all three of the administration witnesses at the same time. It might facilitate timewise.

Mr. William Horn, who is the Deputy Under Secretary of the Department of the Interior; William Gianelli, Assistant Secretary for Civil Works, Department of the Army; and Mr. Joe Hall, Assistant Administrator for Power Management and Operation and Maintenance, Western Area Power Administration, Department of Energy.

Please proceed, Mr. Horn.

STATEMENT OF HON. WILLIAM P. HORN, DEPUTY UNDER SECRETARY, DEPARTMENT OF THE INTERIOR

Mr. HORN. Thank you, Mr. Chairman.

My name is William Horn, Deputy Under Secretary of the Department of the Interior. It is a pleasure to have this opportunity to appear before your committee today to provide you with the Department's views on specific portions of S. 1739, the Water Resources Development Act of 1983.

Many sections of this bill have direct impacts on the Department's programs, as well as those of the other water resource development agencies within the Federal Govenment.

I will focus my remarks here on two titles of the measure: Title VI, dealing with cost sharing, and title IX, dealing with the creation of a new Water Resources Board.

I would ask, however, that my entire statement be placed in the record.

Senator NICKLES. Your entire statement will be placed in the record.

Mr. HORN. Thank you, Mr. Chairman.

Let me turn first to the provision of title VI, dealing with cost sharing.

As the President indicated in his January letter to Senator Laxalt, a new national water project financing policy has been established, which will allow us to get on with the job of completing projects where commitments have already been made, and undertaking new construction starts to meet the country's future water needs.

The historic cornerstone for water development in this Nation has been one of partnerships among the Federal Government, States, and other project beneficiaries.

Traditionally, many water project beneficiaries have repaid the construction costs of their projects. This is clearly one form of cost sharing. And our Bureau of Reclamation has used this approach consistently since its inception in 1902.

It is clear, however, that new partnership arrangements will be necessary to finance projects due to increased cost and present budgetary constraints.

Now, the President's cost-sharing policy recognizes that water development needs, geography, climate, economy, fiscal capacity, and Federal interests vary from State to State and region to region.

Because of this great variety, we believe it is prudent and appropriate that cost sharing in the financing of new projects be evaluated on a project-by-project basis.

Nevertheless, within Interior, consistency will be an objective of all cost-sharing arrangements.

Because of this policy, we are pursuaded that title VI of the bill as presently drafted conflicts with the President's policy enunciated in January.

I have a copy of the President's January 24, 1984, letter appended to my statement, and I would ask that it be made a part of the record as well.

Senator NICKLES. It will be included as part of the record.

Do you have that in the form of a possible amendment, or just a copy of the letter?

Mr. HORN. Just a copy of the letter, sir.

Senator NICKLES. But is it your desire that we would formulate cost-sharing proposals more or less on the guidelines that the administration submitted in that letter?

Mr. HORN. That is correct.

Senator NICKLES. Would you assist us in that regard by drafting an amendment that would accomplish that?

Mr. HORN. We would be pleased to render any legislative drafting service that we can, in coordination with the other agencies.

Senator NICKLES. Thank you.

Mr. HORN. Of course, this President's cost-sharing policy applies to all Federal water resources development agencies, including our Bureau of Reclamation, U.S. Army Corps of Engineers, and others.

In that policy, the President rejected the imposition of fixed percentages for cost-sharing arrangements, and opted instead for an approach which is flexible, fair, and fiscally responsible.

Each water resource agency can negotiate with project sponsors and the States to arrive at cost-sharing provisions for projects under its jurisdiction.

Indeed, Interior has already begun to implement the President's policy, as is reflected in our five new starts in the fiscal year 1985 budget.

Moreover, the Bureau of Reclamation has been cost sharing in the form of post-project repayments since its inception in 1902.

Where the President's new policy affects the Bureau of Reclamation most is in the encouragement of more non-Federal up-front financing of both the planning and construction phases of the project.

Since the need and financial condition of each potential project sponsor vary considerably, it is necessary to negotiate the cost-sharing arrangements on a case-by-case basis.

Let me move on now to discussion briefly of the provisions of title IX, which we also strongly oppose.

Of course, title IX would create a new Federal bureaucratic entity known as the National Board of Water Policy, with functions duplicating existing activities.

While we do not disagree with some of the objectives of the proposed National Board, most of these matters are being adequately addressed by existing entities. There is clearly no need for a new

organization, particularly one of the dimensions described in the pending legislation with its added budgetary costs.

The Cabinet Council on Natural Resources and Environment is the existing, and appropriate, Executive forum for deliberation of Federal and national water policy. It consists of Cabinet officers and other senior officials, operating under the direct aegis of the President.

This forum addresses matters of water policy, issue identification, and program coordination. From within the Council, interagency work groups are formed when specific issues require additional analysis and consideration.

A recent example of this was the development of the President's policy for water project cost sharing.

This present approach obviates the need for another coordinating body. Indeed, title IX would relegate water policy to just one more board, and we are convinced that elevation of water policy by the President to his own Cabinet Council should be maintained and encouraged.

Mr. Chairman, that concludes the oral summary of my remarks. Thank you. I'd be pleased to answer any questions.

[The prepared statement of Mr. Horn follows:]

STATEMENT OF WILLIAM HORN, DEPUTY UNDER SECRETARY, BEFORE THE SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES

April 9, 1984

Mr. Chairman, it is a pleasure to have this opportunity to appear before your Committee today and to provide you with the Department of the Interior's views on specific portions of S. 1739, the "Water Resources Development Act of 1983." Many sections of this bill have direct impacts on the Department of the Interior's programs as well as those of the other water resource development agencies within the Federal Government. Your attention to this legislation is, therefore, most appropriate. While we have definite concerns about several titles in this legislation, I will confine my remarks to those sections which are the expressed area of concern of your Subcommittee.

Water Policy

I would like to preface my remarks with a word or two about the Administration's recently announced cost-sharing policy for water project development. As the President indicated in his recent letter to Senator Laxalt, a new national water project financing policy has been established which will allow us to get on with the job of completing projects where commitments have already been made and undertaking new construction starts to meet the country's future water needs.

The historic cornerstone for water development in this nation has been one of partnerships between the Federal Government, States and other project beneficiaries. Traditionally, many Federal water project beneficiaries have repaid

the construction costs of their project--this is clearly one form of cost-sharing. The Bureau of Reclamation has used this approach since its inception in 1902. However, it is clear that new partnership arrangements will be necessary to finance projects due to increased costs and budgetary constraints.

In establishing a water project financing policy, the Administration sought to recognize that water development needs, geography, climate, economy, fiscal capacity, and Federal interests all vary from State to State, and region to region. Futhermore, the Federal Government has made prior commitments to individual States with regard to water development within their borders. Because of this great variety of problems, needs, and prior commitments, we believe it is prudent and appropriate that cost-sharing and the financing of new projects be evaluated on a project-by-project basis. Nevertheless, to the extent possible, the criteria used in such an evaluation should be consistent within given water use categories.

We are persuaded that title VI of S. 1739, as presently drafted, conflicts with the President's announced policy of cost-sharing for water resource development projects. I have a copy of the President's January 24, 1984, letter outlining his water project development policy and ask that it be made a part of the record.

The water project financing and cost-sharing policy adopted by President Reagan applies to all Federal water resources development agencies, including the Department of the Interior's Bureau of Reclamation and the U.S. Army Corps of Engineers. In adopting this policy, the President rejected the imposition of fixed percentages for establishing cost-sharing partnerships and opted for an approach

which is flexible, fair, and fiscally responsible. Each water resource agency can negotiate with project sponsors and the States to arrive at cost-sharing provisions for projects under its jurisdiction. Many of the considerations outlined in section 602, 603, and 604 would form a basis to begin such negotiations.

Cost-sharing may include up-front contribution or financing, repayment at the prescribed interest rate, and a payment of operating and maintenance costs. This last category is almost always the responsibility of the user. Using this definition the Bureau has been cost-sharing on projects since its inception in 1902. Where the President's new policy affects Reclamation most is in the encouragement of more non-Federal up-front financing of both the planning and construction phases of a project. Since the need and financial condition of each potential project sponsor varies considerably it is necessary to negotiate the cost-sharing arrangments on a case-by-case basis.

Policy considerations aside, title VI, as drafted, is unclear. The cause of this could well be that ambiguous terms are used with little or no definitions in title VI. The Bureau of Reclamation's use of the term cost-sharing refers to the allocation of project costs between Federal and non-Federal interests during the life of the project.

We strongly oppose the provisions of title IX, which would create another Federal entity, known as the National Board of Water Policy, with functions duplicating existing activities. While we do not disagree with some of the objectives of the proposed National Board, most of these matters are being adequately addressed by

existing entities. Therefore, there is clearly no need for a new organization, particularly one of the dimensions described and with its attendant costs.

The Cabinet Council on Natural Resources and Environment is the existing and appropriate executive forum for deliberation of Federal and national water policy. It consists of Cabinet officers and other senior officials operating under the direct aegis of the President. This forum addresses matters of water policy, issue identification, and program coordination. From within the Council, interagency work groups are formed when specific issues require additional analysis and consideration. A recent example of this was the development of the President's policy for water project cost-sharing. This approach provides total integration with existing agencies and obviates the need for another coordinating body. Indeed, title IX would relegate water policy to one more board--we are convinced that maintaining direct Presidential involvement through his own Cabinet Council is a better approach.

Title IX also addresses water resources planning policy. In March of 1983, the Administration adopted the new Principles and Guidelines to replace the old Principles and Standards which had contributed to the slowdown of water project development for several years. We believe that the new Principles and Guidelines will be effective and useful and that it is imperative that they be left in place long enough for a fair evaluation of their effectiveness.

let me now address a series of specific matters within the S. 1739. Regarding section 601(a), as stated in the President's letter to Senator Laxalt, the water project financing and cost-sharing policy of this Administration is:

- All Federal water development agencies will continue to seek out new partnership arrangements with the States and other non-Federal interests in the financing and cost sharing of all proposed projects. Each such agency will negotiate reasonable financing arrangements for every project within its respective area of responsibility.

Section 601(a) provides that hydroelectric power construction shall not be initiated until the appropriate Power Marketing Administrator (PMA) has determined that the surplus power produced can, in fact, be marketed under the condition required by Federal power marketing law. It further provides that contracts for the sale of power by a PMA may provide for an advance of funds by the purchaser for transfer to the Federal agency constructing the project. As presently worded, this would require all contributed funds to be advanced to the PMA by the purchaser and then subsequently transferred to the construction agency, and this section should be deleted. Currently, the Departments of the Interior and Energy are currently developing a Memorandum of Understanding that will deliniate their respective roles and responsibilities with regard to cost sharing and financing arrangements for Federal hydroelectric projects under the President's policy. We also point out that the purchaser of the power may not be the same entity which contributes the up-front funding, as is the case in the modification to the Buffalo Bill Dam and Powerplant, State of Wyoming.

Section 217. We agree that all suits involved in the use of Missouri River water in a coal slurry development should be concluded as expeditiously as possible consistent with the interests of all of the parties.

Section 224. We generally believe that provisions for mitigation of any loss of fish and wildlife resources should be part of water resource development. We are also convinced that these provisions should apply within reason to all Federal water resource agencies. It is the practice of the Bureau of Reclamation to implement authorized mitigation of fish and wildlife losses concurrently with project construction to the extent practicable. This is just good construction management.

On occasion, the Bureau has provided for mitigation of fish and wildlife losses at projects already constructed but usually this is done when the Congress indicates an existing need. While we do have concerns about some provisions on section 224 of S. 1739, we do not have a formal position at this time.

Section 701(b)(10) authorizes the Gregory Country, S.D. Pumped Storage Facility with an expected cost of $1.28 billion. Included in that project is $100 million for associated water supply and irrigation features to be undertaken by the Secretary of the Interior.

In 1981. Reclamation considered a traditional 50,000 acre irrigation development in conjunction with this pumped storage facility. Using 1980 costs and energy values the project was found economically infeasible, so the study was not pursued. Reclamation has not studied in detail municipal water supply associated with the Gregory County project, so we cannot comment on the feasibility of such measures.

Mr. Chairman, this concludes my prepared statement. I will be please to answer any questions you have.

THE WHITE HOUSE

WASHINGTON

January 24, 1984

Dear Paul:

Some time ago, you and 14 of your colleagues wrote to me expressing your concerns regarding water project development. I appreciated receiving this valuable counsel which has helped crystalize the extensive discussions within the Administration on this vital subject.

We all agree on the goals. These goals are to revitalize the magnificent water development programs launched early in our Nation's history. The Federal-State partnership has succeeded even beyond the dreams of those who developed the concept so many decades ago. This partnership has helped create abundant year-round water, electric and food supplies; reduced flooding, and provided low-cost inland, coastal and oceanic waterborne transportation. In addition, millions of Americans have enjoyed vast new opportunities for water-related recreation.

Providing enough high quality water promptly to those who need it is a task that has confronted Americans since the earliest days of our national experience. In the first summer at Plymouth, the Pilgrims experienced a summer drought that nearly ruined their crops. More than 350 years later, Americans had to contend with flooding on the Mississippi and the Colorado, and drought throughout most of the rest of the Nation. The lesson of these events is clear. Providing enough high quality water where and when it is needed is a never-ending process.

This Administration is committed to working with the States, local entities and those private sector interests concerned with water development all across America. We are rebuilding the Federal-State partnership so that we can resume water development efforts to avert water crises in the coming decades. We have accomplished the following:

- Re-established the policy of State primacy in water rights resulting in less interference from the Federal government in water resources management.

  -- Reinforced State primacy by the repeal of a Federal non-reserved water rights opinion.

  -- Established and successfully implemented a process for negotiated settlements of Indian water rights disputes.

  -- Offered States the option of having Federal reserved water rights within their boundaries expeditiously inventoried and quantified to enhance their management capability.

- Implemented the Reclamation Reform Act of 1982 to recognize advances in agricultural technology and the market economy based on the family farm, giving these farmers an opportunity to build commercial operations without unrealistic limitations on their access to land and irrigation water.

- Established new Principles and Guidelines for water project planning to remove cumbersome regulations and promote flexibility in planning, thereby encouraging water resources development.

- Elevated water resources decisionmaking to the level of the Cabinet Council on Natural Resources and the Environment, whose Chairman Pro Tempore is the Secretary of the Interior.

- Presented to Congress new project construction proposals incorporating increased non-Federal financing based on the tangible economic returns produced by the projects.

All of these actions have helped to rebuild and strengthen the foundations of the Federal-State partnership so we can move forward to develop much needed, environmentally sound and economically prudent water resources projects. We have made numerous studies and conducted extensive discussions within the Administration in quest of ways that the Administration, the Congress, the States, and the American people can develop true partnership arrangements that recognize the realities of today's economics and tomorrow's environment. We are gratified that Congress is now addressing the key issues related to water project cost sharing and financing.

Water development needs, geography, climate, economy, fiscal capacity, and Federal interests all vary from State to State, and from region to region. Furthermore, the Federal government has made prior commitments to individual States with regard to water development within their borders. During the past months, I have fully considered the views expressed by you, your colleagues, the Cabinet Council on Natural Resources and the Environment, and many of the Governors regarding how the Federal government might participate in water project development and project financing under these conditions. Traditionally, many Federal water project beneficiaries have repaid the construction costs of their projects, but we all agree new partnership arrangements will be necessary to finance any additional projects in the future.

It is time to conclude the discussion and to establish a national water project financing policy so that we can get on with the job of completing projects where commitments already have been made and undertaking new construction starts to meet the country's future needs.

Indeed, the construction of storage reservoirs has not kept pace with the increasing demand for water. As a result, our water supply is less reliable and more vulnerable to drought than it was a decade ago. We must develop even better ways to work together effectively. We will have to make the best use of the water we have if we are to avoid serious future problems. I am convinced that by working with State and local governments we can solve the problems of flood, drought, and quality.

The water project financing and cost-sharing policy of this Administration is:

- All Federal water development agencies will continue to seek out new partnership arrangements with the States and other non-Federal interests in the financing and cost sharing of all proposed projects. Each such agency will negotiate reasonable financing arrangements for every project within its respective area of responsibility.

- Prior commitments to individual States with regard to water development within their borders must be considered and shall be a factor in negotiations leading up to project construction.

- Consistency in cost sharing for individual project purposes, with attendant equity, will be sought.

- Project beneficiaries, not necessarily governmental entities, should ultimately bear a substantial part of the cost of all project development.

- Safety problems at Federal dams should be corrected as expeditiously as possible. The cost of safety work should be borne by the Federal government. However, if additional economic benefit results from the modification, appropriate cost sharing among the beneficiaries shall be allocated by the appropriate Secretary. Criteria to determine dam safety designation shall be developed by an interagency technical team in consultation with non-Federal parties.

- The costs incurred by the Federal government in project planning generally will be shared with project sponsors. Specific arrangements will differ among agencies because of their differing planning, authorizing, and funding procedures.

- Once financing, cost sharing, and cost recovery arrangements have been agreed to, they will be reviewed by the Office of Management and Budget and submitted to the Congress for ultimate disposition.

This process will result in arrangements that are workable, fair, just, and practical. It will put into place the final building blocks in an improved program to meet America's current and impending water needs while recognizing Federal budgetary realities.

I sincerely appreciate your cooperation on this subject. Working together, we can move ahead into a new era of water project development for the benefit of the Nation and all Americans.

Sincerely,

Ron

The Honorable Paul Laxalt
United States Senate
Washington, D.C. 20510

Senator NICKLES. Thank you very much, Mr. Horn.
We welcome Senator Evans.
Did you have an opening comment you would wish to make?
Senator EVANS. No, Mr. Chairman.
Senator NICKLES. OK.
Mr. GIANELLI.

STATEMENT OF HON. WILLIAM R. GIANELLI, ASSISTANT SECRETARY, CIVIL WORKS, DEPARTMENT OF THE ARMY

Mr. GIANELLI. Mr. Chairman and members of the committee, I'm William Gianelli, and I'm the Assistant Secretary of the Army for Civil Works.

I don't have a prepared statement with me today. I'd be pleased to respond to any questions the committee might have.

Let me just by way of background indicate that, as Mr. Horn has indicated, the Cabinet Council on Natural Resources and Environment has been very active within the administration in connection with setting water policy.

It has been my pleasure for the last 3 years to Chair the Assistant Secretary's Working Group that's been working in connection with the policy matters.

I want to reiterate again what Mr. Horn indicated, the latest letter from the President, dated January 24, to Senator Laxalt, does represent the latest policy statement of the administration with respect to cost sharing.

Senator NICKLES. Thank you very much.

Mr. Hall?

STATEMENT OF JOE D. HALL, ASSISTANT ADMINISTRATOR FOR POWER MANAGEMENT AND OPERATION AND MAINTENANCE, WESTERN AREA POWER ADMINISTRATION, DEPARTMENT OF ENERGY

Mr. HALL. Mr. Chairman, I am Joe Hall. I am with the Western Area Power Administration. I'm here today representing the Department of Energy. I'm pleased to be here to respond on behalf of the Department to this important piece of legislation.

I don't have a prepared testimony, but I would be happy to respond to any questions.

Senator NICKLES. Thank you very much.

Initially, I'll ask Mr. Gianelli, you have how many years of service?

Mr. GIANELLI. You mean with the Federal Government, or with water matters?

Senator NICKLES. With the Federal Government.

Mr. GIANELLI. With the Federal Government, 3 years.

Senator NICKLES. And in water matters?

Mr. GIANELLI. Well, in water matters, I've spent my entire life on that; a major portion of it in the State of California, primarily in connection with the State water project.

Senator NICKLES. You'll be leaving. Is that correct?

Mr. GIANELLI. Yes. I'm going back to California next month.

Senator NICKLES. Well, congratulations to you. We want to compliment you on the fine service that you've provided.

Mr. Horn, you mentioned that you would much prefer to see the President's cost-sharing proposals, and indicated that you had helped draft those proposals in legislative form. You also mentioned your opposition to title IX.

Is that position shared—Mr. Gianelli, I'll ask you that question. Do you agree with Mr. Horn that both the President's cost-sharing proposal would be a better one than the direct formula that's set out in this bill?

Mr. GIANELLI. Let me say this, Mr. Chairman. I think the President's letter is not very specific in the way of exact cost sharing. You will recall in his letter, he indicates that each Federal agency that has certain water development responsibilities will work with the project beneficiaries in order to develop the appropriate policies.

The way we view that in the Army Corps of Engineers, the bill, S. 1739, largely consists of corps projects, and, certainly, we will, within the framework of the President's letter, orchestrate water policy, particularly with respect to cost sharing.

I may add that we have, in the last 2 years, worked out some arrangements with project beneficiaries. We have 14 projects in the fiscal year 1985 budget request which envision new cost-sharing arrangements with project beneficiaries. We hope that the Congress will see fit this year to approve going ahead with these 14 projects, because I think it illustrates exactly what the President has in mind.

Senator NICKLES. So on those 14 projects have you used, what, have you considered those individually as far as what could be paid?

Mr. GIANELLI. Well, you have two things, Mr. Chairman, when you talk about cost sharing. You have first, the matter of repayment. That is the total amount that the non-Federal interests may have to pay with respect to the project. The other very important thing is up-front financing.

When the Cabinet Council considered this matter early in the administration, one of the things we were very conscious of was the huge Federal deficit. One of the things we wanted to try to do was to devise a water policy whereby the Federal Government might get some assistance from project beneficiaries with respect to the up-front financing of project costs.

In connection with the corps' programs, we have attempted to do that. We don't have all of the arrangements worked out in intimate detail, but that's one of the areas which we're working on. We're trying to get project beneficiaries to contribute additional funds on an up-front basis, or during the course of the construction of the project, to help alleviate the big problem of the Federal deficit.

One of the things that I know that some of us have been concerned with, unless you devise some other method of assisting in the financing of these projects, is that Federal funds will not be available to carry out the water resource work which I think is needed in the country. If you take, for example, the Corps of Engineers' projects, you can very quickly add up to $30 or $40 billion worth of water resource projects that are either authorized or under construction. It's obvious that we can't construct all of those projects on the basis of historical formulas.

So one of the main thrusts that we, in the Army Corps of Engineers, have been trying to develop is a means whereby we might get some assistance in the way of up-front financing for construction of Federal water projects. We have done a great deal of work in that regard, and we think we have made considerable progress.

Senator NICKLES. Do you think the formula or the guidelines that are set out in this legislation would be contrary to that principle?

Mr. GIANELLI. Well, let me talk a little about those. I'd also like to respond to Senator Wallop.

As you know, some of the present policies with respect to water project cost sharing are fixed. For example, I think it's generally understood that any costs that are allocated to hydropower have to be recovered on a 100-percent basis. In other words, hydropower should pay its own share in terms of allocated cost. This is a fixed percentage.

The same thing is true with municipal and industrial water. Municipal-industrial water is considered to be, by the Federal agencies, fully reimbursable. That is fixed cost sharing.

In connection with corps flood control projects, the present law is that for local flood protection projects non-Federal interests will pay all of the costs of lands, easements, rights-of-way, and relocations.

That again is fixed cost sharing.

With respect to recreation, the present law governing the corps projects calls for 50 percent cost sharing of separable recreation costs by non-Federal interests.

I think one of the things that we're trying to do is to maintain at least a consistent approach, because I think one of the things that we'll find is that every project beneficiary is watching very closely what, for example, the Federal Government may offer to some other project beneficiary. The quickest way I know of getting into trouble is to offer some project beneficiary a different degree of Federal participation than the other; whether it be flood control, navigation, which is a very sensitive issue, or whether it be other purposes.

So I think it's great to have flexibility, but I think also, as the President indicated in his letter, you have to have consistency.

Consistency is one of the things we've been concerned about with the corps which, in my judgment, has a little different problem than the Bureau of Reclamation. The corps has many, many projects which are much smaller by and large than huge irrigation projects of the Bureau of Reclamation located in the West. It's extremely important for the corps to be consistent and at least to offer some cost sharing guidelines to the district engineers that are scattered throughout 36 districts in the United States, covering all 50 States.

I don't have the problem with the formulas in terms of corps projects that are set forth in the legislation that you're hearing today, Senate bill 1739, with the understanding that you have to be flexible. And certainly with respect to flood control and with respect to irrigation, you have to consider things like ability to pay.

I think that's understood in the President's policy, and I think that's what we're trying to do. But again, I think you have to be careful that you don't lump all Federal projects into the same category.

In terms of the corps, its primary responsibilities are flood control and navigation. In terms of Interior, Bureau of Reclamation, it's primarily irrigation. The problems of an irrigation water user are altogether different than the problem, for example, of the beneficiaries of a navigation project.

So I merely want to offer and suggest that as your committee looks at the entire problem, you recognize some of these points that I've just been trying to make.

Senator NICKLES. OK. To maybe try and pin you down a little. And I appreciate the clarification that you have given. But I was inferring from your comment that you already have some rules or some formulas that you pretty well follow that have been established by practice.

Legislatively, do you see a problem statutorially?

Mr. GIANELLI. Yes, I do. As a matter of fact, Mr. Chairman, what we have said in connection with those 14 projects where we have negotiated some cost-sharing arrangements is that if, in fact, the administration and the Congress agree to some different formula, we will follow that formula. Our problem has been lack of any new direction. We felt like we should move out on our own, with the recognition of whatever we're doing may not meet with the approval of the Congress, and may not be the final product which is negotiated between the Congress and the administration. If that turns out to be different than what we'd assumed, certainly we would

make adjustments with respect to the cost-sharing provisions on the 14 projects that I indicated.

Senator NICKLES. An additional question is: What is your position on the National Board of Water Policy?

Mr. GIANELLI. I agree with Mr. Horn completely. We don't think that you need another board. We think that the Cabinet Council is perfectly capable of dealing with this subject. We would object to the formation of an independent board such as the one suggested in S. 1739.

Senator NICKLES. Do you think the formation of the board would expedite, or possibly work to the detriment and possibly bog down the——

Mr. GIANELLI. I just think it would add another layer which would be unnecessary, because the administration, as it moves ahead, is still going to have to go through certain exercises on its own in connection with sending projects to the Congress. It seems to me what you're doing is perhaps just interjecting another level which those of us in the administration, by virtue of the experience we have gained with respect to the Cabinet Council and the committees of the Cabinet Council, feel isn't necessary.

Senator NICKLES. Let me ask you an additional question.

Are you familiar with the Gregory County Hydroelectric——

Mr. GIANELLI. Yes, I am.

Senator NICKLES. Is that a new authorization, the $1.2 billion——

Mr. GIANELLI. Yes. Gregory County is primarily a hydropower project, with some provisions for irrigation such as has been indicated by Mr. Horn. But it's primarily a hydropower project.

We certainly understand the need, if you're going to include irrigation, to have the Department of the Interior to get their say with respect to how the irrigation part of it is handled.

Senator NICKLES. What's the status of the project now?

Mr. GIANELLI. It's not an authorized project. It's been in the planning stage, as I recall, by the Corps of Engineers. It's one of those projects that I feel we should be able to get some assistance with respect to up-front financing.

I think South Dakota is very interested in the project. We have had a number of discussions with the Governor and it's my understanding that currently the State of South Dakota is trying to go ahead with this project on its own. If they can, I think it would be a great step forward.

I think what they're planning to do is to take the hydroelectric benefits that will accrue from that project and convert it to a financing vehicle, which is the same thing we're trying to do with some of these other Federal projects.

It's my understanding that, while the Federal Government has done quite a bit of work with respect to the planning of that project, it's currently being looked at by the State of South Dakota as a project which possibly they might go ahead with on their own.

Senator NICKLES. So there's a possibility this $1.2 billion project could be done entirely without the Federal Government?

Mr. GIANELLI. Well, that's the way I think we've looked at it. There may be certain irrigation aspects that may pose a problem. But in terms of the hydroelectric power, if it's a good hydroelectric project, and we think it is, and if the State is able to enter into a

contract, say, with a power utility to purchase that power, then I think you have a financing vehicle.

We did that in California when I was director of the California Department of Water Resources. We took the power output from Oroville Dam, which is a large, multi-purpose, $500 million dam and reservoir and a key part of the State water project at the time it was constructed in the middle 1960's, and entered into a contract with four power utilities in California who agreed to buy all of the power output from that project and to pay the State $16 million a year. We took that $16 million contract and converted it to a quarter of a billion dollar revenue bond issue, which financed half the cost of this project. That's the kind of thing that I've been trying to interject into Federal projects.

But specifically, in response to your question, I think that's the kind of thing which the State of South Dakota is attempting to do at this time, I believe, with respect to the Gregory County project.

Senator NICKLES. Do you think this project should be included as part of this bill?

Mr. GIANELLI. Well, I would say this. I don't see any problem having it included as part of the bill, but I certainly don't think we ought to do anything which would preclude the opportunity of South Dakota going ahead on its own, if it can. Certainly, that ought to be one of our paramount objectives.

Senator NICKLES. Mr. Horn, there's $100 million that may be used for water supply and irrigation as part of that project. Has Interior looked at that?

Mr. HORN. We did an evaluation, through the Bureau, last year, looking at it in terms of just the traditional irrigation project, and concluded that just as an irrigation project, per se, it was economically marginal and we would not otherwise proceed.

However, we are cognizant of the fact that there is extreme interest in the local area for the project. As Mr. Gianelli indicated, that might be the basis for securing some fairly significant degree of local commitment.

As an irrigation reclamation project by itself, it does not pass economic muster.

Senator NICKLES. It does not pass?

Mr. HORN. No. Just the irrigation portion of it as a reclamation project, does not pass economic muster.

Senator NICKLES. Do you happen to remember the numbers of farmers or acres that would be served?

Mr. HORN. No, I don't, sir. We can get your those numbers very quickly though.

Senator NICKLES. If you would supply that for the committee it would be appreciated.

Mr. Hall, is this project, is that under your grid?

Mr. HALL. Yes, it is.

Senator NICKLES. Is there the demand for the additional power in——

Mr. HALL. Mr. Chairman, I'd have to say that at this particular time there probably is not, but by the time it can be completed, say 1992, we do anticipate a need for that type of power.

Senator NICKLES. You think the demand is there to where it could be done on a non-Federal basis?

Mr. HALL. We appreciate the language that would permit that to happen. I agree with Mr. Horn and Mr. Gianelli that the flexibility will allow us to incorporate the President's drive is important. But the legislation is there—the vehicle which allows for non-Federal funding. That's the important thing.

I feel that there's some wise and sensitive language in the bill which states that we, the Power Marketing Administration, is responsible in this area, and would determine the marketability. I can tell you honestly that I think that's important and I'd like to say why.

It would be authorized as part of the Pick-Sloan Missouri Basin project. The non-Federal contribution would need to be determined, and the marketability of that power would have to be determined. That's a key determination, because, let's say that we have reason to believe today and say that it's marketable in 1992, but when we get to 1992 we find it is not marketable. The people who have to pay for that power are the existing ratepayers.

The existing ratepayers tell me that it is highly important to them, the way we handle this. Many of them do not like the idea of non-Federal/up-front financing, but they feel strongly about the need and desirability of the project, so they are willing to pursue non-Federal/up-front financing, but they want it done in a way in which they, the ratepayers, are protected. It is important, then, that this marketability analyses be made by the appropriate power marketing administration so that all major impacts can be considered.

Senator NICKLES. Thank you very much.

Senator Wallop, did you have some questions?

Senator WALLOP. I have a couple, yes.

I was happy to hear Mr. Horn and others resist the establishments of the new water board entity. I just think that's a thicket that would cause endless confrontation between States and the Government and other things and, clearly, slow down, rather than enhance any kind of process by which these projects might come on line.

I notice, curiously, that the now-defunct Water Resources Council had a staff of 50, and they had a number of committees. They really had virtually no record of achievement worth reporting. And I don't know anybody who's missed it. I've never had anybody from Wyoming come up and say, "God, put it back". [Laughter.]

Senator WALLOP. I would hope that the administration was quite clear in this, but I would just ask you: Aren't there a number of channels for the expression of public concern now, like the NEPA process, and awareness programs within your own agencies, and we have Congress with field and local hearings. Don't they really satisfy most of the needs that the public has to be heard on issues?

Mr. HORN. Mr. Chairman, as you know, we have an extremely open planning process in which we have to work extensively with the localities, with the conservation districts, and of course, with the prospective beneficiaries of reclamation projects. We have the complete environmental assessment process. Of course, we have to bring projects up to Congress for authorization, and you go through your own scrutiny. The public has more than adequate opportunities to become involved. We also have telephones that work and

mail that gets answered. So there are a plethora of opportunities for the interested citizenry and the institutions to come to us and to express their concerns. Frankly, if they don't get satisfaction from us, they have a tendancy to go to other places and other people and make their interests known.

Senator WALLOP. Mr. Gianelli, I think I heard what you said about the cost sharing, but let me just see if I can start from the beginning.

Do you generally support the President's letter to Senator Laxalt?

Mr. GIANELLI. Oh, absolutely. In fact, I helped Secretary Clark draft it.

Senator WALLOP. Well, what worries me is the drafting in this bill, where it appears that the requirement for 35 percent non-Federal support for irrigation is rigid.

I thought I heard you say that you thought there were times when the ability to pay for the irrigators was clearly consideration. Is that correct?

Mr. GIANELLI. Yes, that's correct, particularly, Senator, with respect to flood control and with respect to irrigation.

That is one of the deliberations that the Cabinet Council had last year. The Cabinet Council concluded that in those two uses particularly, ability to pay was very important, and that will have to be a consideration, obviously.

Senator WALLOP. So to the extent that it is unclear whether that's a rigid minimum participation, looking only toward a greater flexibility above it, you would not agree with that?

Mr. GIANELLI. Well, let me refer you to flood control, if I could, Senator, then perhaps Mr. Horn would like to address irrigation.

The present law with respect to flood control projects is, that if you take a reservoir project that has a flood control allocation, there's no non-Federal cost that's attributable to that storage project.

On the other hand, if you take a levee project, of which there are many in the United States, the non-Federal interests have to pay the cost of lands, easements, rights-of-way and relocation of utilities.

Senator WALLOP. There's one in my State.

Mr. GIANELLI. Yes. Furthermore, the local contribution can vary significantly depending upon where the levees are located. For example, in a developed area, the non-Federal cost of that levee project could be as high as 50 percent of the total cost of the project.

Looking at flood control projects generally, it seems to me to be sort of unfair to have a rule where if it's a storage reservoir, the non-Federals contribute nothing, and where you have a levee project, the amount of contribution is fixed by virtue of what the costs of lands, easements, rights-of-way, and the relocation of utilities are which may vary from zero to 50 percent.

What we did, and what this does in terms of the bill is to provide for a 35-percent non-Federal share across the board.

I've given the corps guidance, and I've said, look, you 36 districts that have many of these flood control projects, go out and negotiate

with non-Federal interests on flood control and see if you can get a uniform contribution. We have suggested 35 percent.

Let me quickly add, however, that we made it very clear that if the Congress and the administration agree to something different than that, we will adapt to whatever cost-sharing arrangement is made.

When you talk about percentages, we have, in the corps, given the field offices certain guidance, which I think you have to do from the standpoint of consistency. But it's not locked in concrete, and I think that's the answer you were seeking.

Senator WALLOP. It's clear that the concept of case-by-case is really beneficial as a concept. And the concept of consistency is, too. But there's got to be some times when an urgent nature of something overrides.

Mr. GIANELLI. Well, Senator, it's particularly important in terms of up-front financing because that's where there is a wide variation in capability. I think you really have to look at it there very carefully.

Senator WALLOP. Let me move to the mitigation authority that's provided in section 224. Let me ask you if you feel it would enhance or complicate the ability of the corps to carry out its water development responsibilities?

Mr. GIANELLI. I haven't looked at that recently, Senator. I think I can comment just generally.

I think that mitigation is something that you have to look at rather carefully in terms of what you ought to do and when you ought to do it.

We had quite a dialog with OMB on this very subject and, as a result of that, OMB has given us—and I think it's applied to Interior, too, although I know the instructions were specifically to the Corps of Engineers, that in looking at mitigation, you ought to have several things in mind. First of all, you should not acquire a lot of extra property to take off the tax roles and have the Federal Government own it, if you can avoid it. That's No. 1.

Second, you ought to try and better manage, for example, wildlife, if that's the problem, on the existing Federal properties, if you can, without acquiring a lot of new property.

Third, you want to apply mitigation wherever you can on lands which may be acquired for dual purposes; for example, if you have to acquire certain lands for reservoir purposes, you ought to try and mitigate on that land, if possible.

I think those things are important. The other element is that when you look at mitigation, it seems to me that very often in terms of water projects, you're inclined to ignore the benefits that those projects may provide in terms of enhancement.

One of the things that we discussed with OMB and that they suggested was that, as you look at the requirements for mitigation, you also look at enhancement. Let me give you an example. If you build a reservoir project on what would normally be a dry-water course most of the year, you provide a very substantial fishery. That may not be the same kind of fishery, but the point of it is, if you provide that kind of enhancement and when you're talking about mitigation, perhaps you ought to consider the pluses as well as the minuses.

So I would say, looking at this language rather quickly again, I would think that any proposal which requires that you have to mitigate before you actually go ahead to construction might perhaps limit you on what you might be able to do in the long-run. I'm not so sure that's a very good idea. I'm not sure that it even ought to be undertaken concurrently with the lands and interests in lands for project purposes.

In other words, if you have a project that's going to be constructed over a long period of time, I don't know why you have to have the mitigation in place before you do the damage that's contemplated by that project when it's complete.

Senator WALLOP. I would agree with that. Is there authority to acquire interest in wildlife and water mitigation for the corps presently under any other provision of law?

Mr. GIANELLI. Yes. I think we look at mitigation as a project responsibility, Senator. If you can identify damages resulting from a particular project, then mitigation ought to be an integral part of the project just like, for example——

Senator WALLOP. But I'm asking you now if you presently have authority to acquire water or interests in water for fish and wildlife mitigation?

Mr. GIANELLI. Water, or interests in water? Could you clarify that.

Senator WALLOP. Well, that's where we are in the legislation in front of us.

Mr. GIANELLI. Well, let me put it this way. You can certainly perhaps take part of the yield of a reservoir and allocate it for mitigation if, in fact, that's the way you mitigate.

Senator WALLOP. But you don't acquire it. You may allocate. But this thing gives you—gives the Corps of Engineers, and, therefore, the U.S. Government the——

Mr. GIANELLI. The way it would work, for example, is you might provide for certain releases of water from that reservoir facility to maintain certain stream conditions downstream.

Senator WALLOP. Can the corps presently condemn water rights to obtain interests in water for a corps project?

Mr. GIANELLI. Can the corps condemn water rights?

Senator WALLOP. To obtain the interest in water for a corps project.

Mr. GIANELLI. I think I'd like to have a chance to respond to that. Normally, the corps doesn't acquire water rights for a project, Senator. The way the corps operates is that it builds the facility, and it enters into arrangement with, for example, a water-using entity for the use of water from that reservoir, and they acquire the water rights.

Senator WALLOP. Well, what I'm trying to get at—and I'd ask Mr. Horn the same thing; if the Bureau can condemn water rights to obtain water?

And, Mr. Gianelli, if you could get us an answer, I would appreciate that, because I realize it's a rather far-reaching question.

Mr. GIANELLI. I'd be pleased to do that.

[The information follows:]

ACQUIRING WATER RIGHTS AT CORPS OF ENGINEERS' PROJECTS

The Corps of Engineers requires that appropriate non-Federal public interests act pursuant to the law of the affected State and obtain any necessary water rights associated with the Corps water resources projects.

Mr. HORN. Mr. Chairman, Mr. Wallop. We can seek to acquire water pursuant to State law because, of course, we have deferred to the primacy of State law in this area, and generally work with the States and other water rights holding entities for acquisition, if we think that's what is needed for mitigation purposes.

But, no, we don't think we have any Federal condemnation authority, nor are we seeking any. We generally try to work in a cooperative fashion pursuant to State law.

Senator WALLOP. But you know of no authority to condemn water rights in order to obtain interest in water?

Mr. HORN. We have not asserted any, and I'm not aware personally of any efforts on our part for that.

Senator WALLOP. So then, may I ask you both if it's your understanding that State water law presently, under present circumstances has to be followed in order to acquire water for whatever purpose?

Mr. GIANELLI. If I could expand on it a moment, Senator.

I think the Bureau of Reclamation has a little different situation than the Corps of Engineers. The Bureau of Reclamation markets water, as I understand it. The Corps of Engineers doesn't market water, it sells storage space in a reservoir, for example. It's water supply.

So under no conditions that I know of does the Army Corps of Engineers actually acquire a water right for a particular water project. It relies on the project beneficiary to acquire those rights.

Senator WALLOP. Let me go on then. In a corps project if, by its nature, it affects the timing of flows in a river system, and by so doing manages to inflict injury to either a private water rights or other property rights, is the Federal Government required to provide compensation?

Mr. GIANELLI. Well, I'd like to check that out. I think our answer is similar to what Mr. Horn indicated; and that is, we try to construct Federal projects, Corps projects, so that they don't interfere with prior water rights that exist on a stream.

If there is an interference, I would like to check out and see what the corps' obligation is.

[The information follows:]

DAMAGES TO WATER RIGHTS RESULTING FROM CORPS OF ENGINEERS' PROJECTS

The Corps of Engineers general experience has been that its water resources projects tend to enhance rather than damage the exercise of private water rights. Corps policy is to require a suitable non-Federal public sponsor to acquire necessary water rights and to assume responsibility for damages to water rights when there is a significant possibility of interference with any such rights resulting from a Corps project.

Senator WALLOP. Well, does the project design for corps projects where there are interbasin transfers of water take into account interstate compacts or Supreme Court allocations?

Mr. GIANELLI. Oh, yes.

Senator WALLOP. The last question is: If section 1 of the Flood Control Act of 1944 subordinates the use of water for navigation purposes to beneficial consumptive uses of the streams in Western States, in your opinion, would additional language requiring the corps to follow State water law in acquiring water for fish and wildlife mitigation purposes facilitate water resource projects in prior appropriation doctrine States?

Mr. GIANELLI. Well, I'd like to give you a careful reply on that, Senator.

[The information follows:]

REQUIREMENT TO FOLLOW STATE WATER LAW IN ACQUIRING WATER FOR FISH AND WILDLIFE MITIGATION

We believe that the requirement would facilities the non-Federal cooperation that is essential for the success of Corps of Engineers projects in the affected States.

Senator WALLOP. That's fine.

Mr. GIANELLI. But let me just comment briefly, because I think there is a problem with respect to navigational flows and State water rights.

We had, for example, a dialog—I think it was perhaps with Senator Nickles' State, Oklahoma. Involving a situation where a navigation project was designed to provide certain flows in the stream for navigational purposes. This was the purpose of the project. We were concerned because under State water rights and under section 1 of the Flood Control Act of 1944, the State could allocate those waters that had been setaside for navigational flows.

My answer to that is very simple; and that is, I want the corps to get together at a very early date with the State officials and work out some understanding with how you integrate, for example, navigational flows with the State's responsibility with respect to the administration of water rights. I think we have a potential here for conflict, but here is a problem, in my judgment, that should be worked out in cooperation between the State and the Federal Government so there's no a controversy.

Senator WALLOP. Well, unless there's been a change, I think that your Digest of Water Resources Policies and Authorities provides most of that answer in 17-8, Water Rights Involved in Project Development. But if there is a change in those things, we would very much appreciate knowing it, because it does—there is a new doctrine espoused in this legislation which I find very troubling, and that is the acquisition of water rights by condemnation and not according to substantive State water law procedures.

Thank you very much.

Thank you, Mr. Chairman.

[A copy of paragraph 17-8, "Water Rights Involved in Project Development," contained in the corps' Digest of Water Resources Policies and Authorities, dated June 30, 1983, follows. There have been no recent changes to that policy.]

EXCERPT FROM U.S. ARMY CORPS OF ENGINEERS' DIGEST OF WATER RESOURCES POLICIES AND AUTHORITIES, DATED JUNE 30, 1983

a. *Definitions.* Water rights are a form of real property, protected by state and Federal laws. Depending on the legal system used in the locale, water rights may originate in ownership of riparian lands or be acquired by statutorily-recognized methods of appropriation. Riparian lands are those which immediately adjoin a

river. Riparian water rights are the right to use, on that land, an amount of water considered "reasonable": that amount which allows maximum use by a riparian landowner without unreasonably impairing other riparian owners. Appropriation systems, predominant in the western states, permit use of a carefully designated amount of water, regardless of land ownership or place of use. Allocations among users are made by temporal priority. Differences between the two basic systems, however, are being overshadowed by state permit systems which require all water users to obtain finite determinations of their water rights. Problems of water quality are increasingly controlled by statutory law.

b. *Effects on Projects.* States have wide powers to legislate the use of property within their borders, except these powers are restricted by several paramount Federal powers granted under the Constitution. Civil Works water resource projects are built under Congressional authorization and usually are not subject to concurrent authorization by state agencies. In particular cases, such as those involving interbasin transfers, interstate compacts, or Supreme Court allocations, projects must be designed to recognize water rights claimed by the residents of an affected state. Congress has also established policies which protect and recognize certain state-created rights, such as Section 1 of the Flood Control Act of 1944, which subordinates use of water for navigation purposes to beneficial consumptive uses of the streams in the western states. Water rights may also be affected by authorized projects in which Congress has made a quantified allocation of waters between the involved states.

c. *Effects of Regulated Flows.* Water resource projects, by their very nature, often have significant effect on the quantity and timing of flows in a river system. Whether such actions constitute an injury to private water or other property rights, for which the Federal government or a project sponsor must pay compensation depends on the degree of interference, the navigability of the stream, and other related factors. Careful consideration is given to the existence of lawful water uses in the downstream areas. Encroachment on those uses is avoided as much as possible.

d. *Acquisition of Water Rights.* Downstream waters made available by a project are subject to allocation under state laws. The parties desiring to use the waters impounded by a reservoir must acquire the necessary water rights under the provisions of state laws, and regulations, and resolve conflicts among users at the local or state level. The Corps provides flow regulation service or storage space within the reservoir to water users as authorized and is not involved in adequacy or timing of the acquisition of water rights.

e. *Legal Sources.* United States. v. Cress, 243 U.S. 316(1917); United States v. Kansas City Life Ins. Co. 339 U.S. 799(1950); Wyoming v. Colorado, 353 U.S. 953(1957); Arizona v. California, 373 U.S. 546(1963); Turner v. Kings River Conser. Dist. 360 F. 2d 184(9th Cir. 1966).

Senator NICKLES. Senator Evans?

Senator EVANS. My only comment to my colleague from Wyoming is, you start tinkering with Western water rights, you've got a bigger fight on your hands than anybody wants to get. One time I tried.

First to Mr. Horn. Title IX you've testified as being, you believe, unnecessary, that there are Cabinet Council, other mechanisms within the Federal Government. And I think you said the telephone is always there for opportunities for others.

I guess that I've had 12 years' experience as a Governor, and sometimes I've felt like the little old lady who has been so prominent recently, we all know one-half of what she said, which was, "Where's the beef?" but it's the other half that I'd like to respond to where you pick up the telephone and says, "I don't think there's anyone there, I really don't." And too often that has been the case. It's been the feeling of local and State representatives that there isn't anyone there. I hope currently there's a better situation.

But the specific question on title IX is, do you feel at all that title IX is unnecessary, or do you have a somewhat different viewpoint as to the State advisory board portion which was, it seemed to me, an attempt to try to tie in the States through their National Governors' Association, in a linkage which might be of some value?

Mr. HORN. Well, Mr. Chairman, Senator. I think our position is simply that a State advisory board as an institutional entity is unnecessary. We needn't spend that money; nor create that entity. We, at Interior strive very hard to work with the Western Governors on both a regular basis and an ad hoc basis.

Under the current arrangement the Secretary of the Interior is the chairman pro tem of the President's Cabinet Council on Natural Resources and Environment, and that is where the President has situated water policymaking on the national level. The States, as institutions, can come directly to the Secretary's office and know that they're talking to the President's designated chairman of national water policy.

The Cabinet Council also consists of other Cabinet officials and senior policymakers; all of whom, of course, are available.

Our position is that institutionalizing the advisory board and naming a staff or giving it a title is not going to necessarily improve communications. What it is going to take is a willing effort by senior administration individuals working with the elected representatives from the States. We think we're accomplishing this and, therefore, obviate the need for any institutional entity.

Senator EVANS. Sometimes there's a different feeling in appearing before a board, and being a part of the process. Those are two different ways of approaching things.

Mr. Gianelli, do you have any comments—since we're talking about cost sharing, and cost sharing with different functions of projects, what is the Corps or the Department's current viewpoint on potential cost sharing on the rehabilitation efforts surrounding Mount. St. Helens and the corrective efforts that are going on there?

Mr. GIANELLI. Well, as you know, Senator, we're presently going ahead with a solution to the Spirit Lake problem, which is putting in a permanent outlet. That's being done as a flood emergency activity under Public Law 84-99.

So with respect to that part of the project at Mount St. Helens, there's no provision for any cost sharing.

In regards to the remainder of the project, which will require a very large expenditure, not yet precisely defined, we're just not sure how that's going to work out with respect to any cost-sharing proposals.

My own tentative view is that the Mount St. Helens catastrophe is so unique that it does not fit into a regular standard project formula. I think with respect to the remainder of work still to be accomplished at Mount St. Helens, which is largely the construction of some combination of retention reservoirs, is that we will have to develop with the State and non-Federal interests something which appears equitable, which is probably outside any policy considerations that may be set forth, for example, in this bill or in any other specific proposal that might be advanced.

I guess what I'm saying in substance, Senator, is that I think the solution to Mount St. Helens in terms of non-Federal participation, has to be developed in cooperation with local people, without any preconceived idea of exactly what that ought to be.

Senator EVANS. I notice with interest that I guess the most closely similar situation now existing is part of the authorization en-

compassed in this bill, and that's for some diversion structures on Hawaii for the lava flows from the volcanos there.

Do you know whether that contemplates any local cost sharing?

Mr. GIANELLI. No. I don't have any knowledge of the project, or I'm not even certain to what extent the Federal Government is participating in that, Senator.

[The information follows:]

LAVA FLOW CONTROL, ISLAND OF HAWAII, HAWAII

In response to resolution adopted November 14, 1975, by the United States Senate Committee on Public Works, the Corps of Engineers prepared a report addressing long-term solutions to control lava flows on the Island of Hawaii.

An emergency lava flow diversion barrier plan was developed for implementation at the time a serious threat of lava flow is evident. The plan called for construction of earthen diversion barriers to direct lava flows into a flow corridor and away from inhabited areas. As proposed by the Corps, the Federal Government would be responsible for construction of the barriers while the State and local interests would be required to provide all necessary lands, easements, and right-of-way necessary for implementation of the plan as well as assume responsibility for any maintenance or subsequent removal of the barriers.

FEMA indicated that it is possible to expedite the Presidentail declaration process, when justified, so that timely grant approval or mission assignment can be accomplished, and, therefore, the recommended plan could be implemented utilizing its existing disaster procedures. This method of implementation would be consistent with the concepts of Federal disaster assistance as established by Public Law 93-288, "Disaster Relief Act Amendments of 1974," and subsequent Executive Order 12148," Federal Emergency Management," July 20, 1974, which created the Federal Emergency Management Agency to coordinate all Federal emergency planning and assistance. It is our understanding that non-Federal interests are required to reimburse 25 percent of the funds FEMA spends for these emergency activities.

The Administration has taken a position that providing the Corps of Engineers with additional disaster assistance authority is not necessary; and, therefore, has recommended to the Congress that the project not be authorized.

Senator EVANS. Well, it's one of the authorizations under this Act. I don't know the answer to it either. It would be interesting to get the answer to that one.

On section 6 on cost sharing, sub (1) deals with hydroelectric power, and it talks about construction not being initiated until the appropriate power marketing administrator determines that the hydroelectric power expected to be generated and not required in the operation of the project can be marketed—and goes on in there.

The important part of that paragraph that I'm interested in is the appropriate power marketing administrator determining the need.

Do you have any commentary—or it would be any one of the three, I guess, of you—on the influence of that proviso with the current Pacific Northwest Power Act of 1980, which requires that the Pacific Northwest Power Planning Council make a finding as to the need for power before Bonneville's power marketing authority can act to acquire major new resource.

Would this, in your view, have any impact at all on that proviso should this be clarified to insure that we don't inadvertently supercede the Power Act of 1980?

Mr. HALL. Senator, if I may. In reference to the specific relationship to the Northwest Power Act, I'd like to ask my colleagues from Bonneville if they could provide that answer for the record.

In regard to the general cost-sharing effects of the bill as they relate to power marketing administrations, I can tell you that we

have approached this subject very seriously. We have had a task force with all the power marketing administrations involved—all five of us.

We have worked out some things that we think will—are going to be acceptable with our colleagues in the corps and in the Bureau. And, by the way, we view ourselves as the agent that does market the power.

In the west, as you know, irrigation is paid for largely by the sale of power. That is the way basis for water projects construction.

The concern I have heard repeatedly from power users is that although they understand the reasons for up-front funding of water projects that they are the checkbook for water projects, they don't want to be a blank check. They want to know what's coming down.

Therefore, we the five power marketing administrations, feel that we have worked out a fair and workable solution. I'd be glad to provide any of this for the record that you care, Mr. Chairman.

[The agreement follows:]

AGREEMENT BETWEEN

WATER AND POWER RESOURCES SERVICE
DEPARTMENT OF THE INTERIOR

AND

WESTERN AREA POWER ADMINISTRATION
DEPARTMENT OF ENERGY

THIS AGREEMENT is entered into and effective this 26th day of March 1980, between the Water and Power Resources Service (hereinafter called the Service), represented by the Commissioner, and the Western Area Power Administration (hereinafter called Western), represented by the Administrator,

WITNESSETH:

WHEREAS: Public Law 95-91 transferred the power marketing function of the Service to Western, including the construction, operation and maintenance of transmission lines and attendant facilities; and

WHEREAS: The intent of this agreement is to implement the principles agreed to by the Commissioner and the Administrator in their memorandum dated November 26, 1979, concerning the transfer of functions and property as per Public Law 95-91; and

WHEREAS: The Service and Western wish to define each agency's responsibilities with respect to that part of the Federal power system referenced in Public Law 95-91; and

WHEREAS: The Service and Western wish to operate the Federal power system in the most efficient manner and to avoid duplication of manpower, functions, and facilities; and

WHEREAS: The Service and Western wish to optimize power benefits while preserving other project benefits; and

NOW, THEREFORE, the parties hereto agree as follows:

1. Responsibility of the Service

The Service has responsibility for planning, designing, constructing, operation, and maintenance of hydro and other forms of electrical power generation as authorized by the Congress.

The Service also has responsibility for water release scheduling and for operational control of all generator units. However, the Service will provide opportunity for Western input to water release decisions and, to the extent practicable, provide to Western generator operative parameters so as to allow Western to optimize the utilization of power resources.

2. Responsibility of Western

Western has responsibility for planning, designing, construction, operation and maintenance of the transmission system, marketing the Federal power and setting power rates to assure that revenues are sufficient to accomplish repayment of all the allocated investment.

Western is also responsible for all power dispatch functions. This includes operations such as the assignment of load to specific generating stations and other sources of supply to effect the most reliable and economical supply as the total of significant area loads rise or fall, provided this can be done within water and operating constraints set by the Service; the control of operation and maintenance of high-voltage lines, substations, and equipment, including administration of safety procedures; the operation of principal tielines and switching; and the scheduling of energy transactions with connecting electric utilities.

Western will provide transmission, switching, necessary wheeling arrangements, and substation service for the Service's projects for all power including project use power, except at some isolated locations and in special circumstances as agreed to by both parties. Western will deliver project power as required by the Service.

3. Availability of Energy

All power and energy generated by the Service in excess of the Service's project loads and station service requirements shall be available to Western for marketing in accordance with applicable congressional authorizations, laws, and regulations.

The Service shall operate the generating plants so as to schedule and to make available electric power and energy as requested by Western, provided that compliance with such request and the operation of the generating plants:

- would not require the safe limits of the generating, transforming, and switching facilities and appurtenant equipment of said generating plants to be exceeded, or otherwise cause damage to the same;

- would not conflict with requirements for the operation of said generating plants with regard to flood control, navigation, irrigation, or with other such purposes as associated Service projects are to serve;

- would avoid, insofar as practicable, harmful effects on downstream activities and interests.

Provided, however, such operation shall be subject to temporary interruption or reductions in the availability of the electric power and energy when, in the opinion of the Service a generating plant requires maintenance, replacement, installation of equipment or investigation and inspection.

The use by the Service of electric power and energy required for project loads and station service use and the outages contemplated above shall be scheduled in advance so that there will be a minimum of interference with the delivery of electric power and energy to Western for marketing.

4. Exhibits

In order to provide for the optimum effectiveness of the Federal power system, the Service and Western have established policies related to the coordination of their activities in areas of mutual interest. These policies are stated in the following exhibits:

Exhibit	Title
A	Power Planning
B	Design and Construction
C	Budgeting and Program Control
D	Research, Laboratory, and Testing Services
E	Project Use Power
F	Power System Operations
G	Power Repayment Studies

The exhibits are attached hereto and hereby made a part of this agreement.

5. Jurisdiction of Lands

The title to all of the lands and rights-of-way involved in this agreement are in the United States. The Commissioner and the Administrator have agreed on an appropriate listing of facilities that will transfer from Service to Western in accordance with Public Law 95-91. This listing has been prepared for inclusion in an Office of Management and Budget determination order that will effect the transfer of the facilities. The Service will transfer jurisdiction of the lands and rights-of-way to Western relating to the transferred facilities. It is agreed that both agencies will aggressively pursue the development of appropriate descriptions for the transferred land and right-of-way.

The exception to transfer all of the Service's interest involves, but is not limited to, transmission lines and access roads that occupy land and land rights that are still required by the Service for its project purposes. Examples are transmission lines along canal right-of-way or across land around reservoirs, and specific provisions included in the Determination Order listing filed with OMB on March 10, 1980. In these cases, Western will be permitted to utilize the Service's reserved land and land rights for the purpose of access, construction, modification, and operation and maintenance of the transmission system as provided in Area/Region agreements.

Since the transfer of substations and switchyards will include sufficient land for future expansion, for appropriate access, and for buffer zones around these facilities, it is agreed that when practical to do so, these areas will be described by aliquot parts of sections rather than using surveyed legal descriptions. Surveys might be required where a transferred facility is so close to a non-transferred facility that an on-site line of demarcation needs to be established.

It is recognized that, due to the integrated nature of the Service's and Western's power facilities, future transfers and/or exchanges of land and land rights may be appropriate. It is agreed that Western and the Service will cooperate to the fullest in the accomplishment of these future land transfers and exchanges.

6. Cooperation

Either the Service or Western may request the other to furnish personnel, materials, tools, and equipment. The party so requested will cooperate with the other and render such assistance as the party so requested may determine to be available. Reimbursement for such cooperation shall be in accordance with provisions of exhibit C.

7. Central Arizona Project Transmission Facilities and Navajo Generating Station

This agreement recognizes and endorses the February 28, 1980, agreement on Navajo Generating Station reached between the Regional Director of the Lower Colorado Region and the Boulder City Area Manager. It is further agreed that ownership and control of the CAP transmission facilities and the United States share of the Navajo Project will remain in Federal ownership and will not be transferred to any other entity in the future.

8. Uncontrollable Forces

Neither party shall be considered to be in default in respect to any obligation hereunder if prevented from fulfilling such obligation by reason of uncontrollable forces, the term "uncontrollable forces" for the purpose of this agreement shall mean any cause beyond the control of the party affected, including but not limited to flood, earthquake, storm, lightning, fire,

epidemic, war, riot, civil disturbance, labor disturbance, sabotage, and restraint by court or public authority, which uncontrollable forces, by exercise of due diligence and foresight, such party could not reasonably have been expected to avoid. Either party rendered unable to fulfill any obligation by reason of uncontrollable forces shall exercise due diligence to remove such inability with all reasonable dispatch.

9. Continuation of Agreement

It is the intention of the Service and Western that this agreement shall continue in effect so long as there are mutual benefits to be derived hereunder. Should there be a change in legislation affecting the parties, or should there be a significant change in circumstances affecting the benefits derived hereunder, the parties will provide notice and negotiate appropriate changes in the terms of this agreement. Until changes are mutually established or until the parties determine that a change cannot be mutually agreed upon, this agreement shall continue in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this agreement on the day first above written.

UNITED STATES OF AMERICA
DEPARTMENT OF THE INTERIOR

By _____
Commissioner
Water and Power Resources Service

UNITED STATES OF AMERICA
DEPARTMENT OF ENERGY

By _____
Administrator
Western Area Power Administration

Exhibit A

POWER PLANNING

1. General

The Service and Western desire to develop a strong, mutually supportive power planning program to efficiently achieve the missions assigned to each agency.

The parties hereto mutually agree to provide for close coordination and identification of responsibility between agencies in planning for future projects and expansion of existing projects, including consideration of plant sizing studies, water supply and reservoir storage allocations, cost allocations, determination of power values for planning and design studies, marketing plans, power repayment studies, transmission system requirements, and generation planning model studies.

The planning and development of future Service power-producing or power-consuming facilities, as well as planning for increasing capacities of existing Service power facilities, will remain the responsibility of the Service.

The marketing of Federal power and the planning and development of future Federal transmission facilities will remain the responsibility of Western.

Carrying out the above responsibilities will require close and timely coordination between the two agencies, including water supply studies (resource availability), load studies (power needs), engineering studies, economic analyses, financial analyses, and environmental and social assessments.

2. Responsibilities of Water and Power Resources Service

The Service has statutory responsibilities for comprehensive planning, development, and management of multi-purpose water and related land resources projects for multiple objectives. In carrying out these responsibilities, Service will determine the extent to which its regional renewable energy resources can be developed by conducting appraisal and feasibility studies of its potential power-producing or power-consuming developments.

Service has the responsibility for appraisal grade resource studies, with the latitude of evaluating project alternatives using basic power marketing and transmission data provided by Western. Service has the responsibility for feasibility grade resource studies, with Western's active participation through membership on the planning team.

Public meetings (including those with affected power customers) held in connection with feasibility grade resource studies will be conducted by the Service with active participation by Western. Public comments will be directed to the Service, who will furnish pertinent comments to Western for response. Service will coordinate all responses back to the public.

3. Responsibilities of Western Area Power Administration

Western has statutory responsibilities for marketing of Federal power and planning, development, and management of the associated transmission facilities. In carrying out these responsibilities, Western will determine marketability of power from proposed resource developments. Western will also identify interconnected transmission system requirements as well as transmission requirements for Service projects under appraisal or feasibility level investigation. Western serves as the principal point of contact with non-federal power utilities regarding power marketing and planning matters.

Western has the responsibility for appraisal grade transmission and marketing studies, with the latitude of evaluating related alternatives using basic power resource data provided by the Service. Western has responsibility for feasibility grade transmission and marketing studies, and Service may be included on the planning team if desired by either agency.

Public meetings held in connection with power marketing or transmission plans will be conducted by Western. Public comments will be directed to Western, who will furnish pertinent comments to Service for response. Western will coordinate all responses back to the public.

4. General Coordination

Virtually all activities of Western and Service related to Service power resources, loads, and associated Western transmission facilities need to be closely coordinated between the two agencies. To facilitate frequent exchange of information on the activities of each agency, a coordinating committee of representatives of both agencies will be established in each Region/Area and Headquarters Office to meet regularly to discuss items of mutual interest and coordinate activities. The committees can agree to possible deviations from the assignment of specific responsibilities described in section 5 below.

5. Study Items

The following is a description and general assignment of specific responsibilities for study items involved in the planning process at the feasibility level:

a. Water Supply Studies. Studies of multipurpose water resource development require water supply analyses; which include river regulation, depletions, reservoir sizing (including annual and longer term operating plans), allocation of storage capacities, and determination of maximum and minimum water levels for power and other functions. These studies will be performed by Service with active participation of Western and other concerned agencies. Also included under this item are hydrological diversity studies concerned with possible interbasin power transfers, which would be performed by Western, with participation by Service if desired by either agency.

b. Load Studies. Estimates of future loads and power requirements are required to determine the need for additional capacity and energy, as well as to determine when the power resources will be required. These power marketing surveys, including analyses of alternative and/or complementary power resources, will be performed by Western with participation by Service. Service will advise Western of its need for such studies and provide input data from water marketing surveys.

c. Engineering Studies. As an integral part of the plan formulation process, studies are required to determine potential project power generation capability and potential project power requirements. Such studies involve siting and sizing of facilities, number of generating or pumping units, design parameters, their operating characteristics, and associated costs. Potential generation sources include modifications to existing hydroelectric plants; new hydroelectric plants; pumped-storage plants; and wind, solar, and geothermal electric generation plants. Potential project power requirements could be for facilities such as pumping plants and desalting plants. These engineering studies will be performed by Service with participation by Western.

In the plan formulation process, it is also necessary to analyze the required transmission facilities or arrangements to provide power to project facilities and market power surplus to project requirements. Existing and new transmission facilities are considered, as well as the effect of any new facilities on the existing system. Where capacity of a non-Federal system may be used, an estimated wheeling rate is also required. All of these studies will be performed by Western, with participation by Service. Western will provide to Service the designs and cost estimates for all transmission facilities and, when required, estimated costs for wheeling power over non-Federal transmission lines.

d. Economic Analyses. Power planning programs require a variety of economic studies as they progress through plan formulation to the plan selection and evaluation stages. These studies will be performed by Service with participation of Western. Economic studies involve use of "power values" for computing benefit/cost ratios and design optimization. Methods of determining power values include marketability, developing costs of thermal generating alternatives and use of generation planning models. The Service has responsibility for developing power values with Western providing input as required. Service and Western shall jointly develop generation planning models. Generally, Service will provide data and expertise pertaining to the potential resource technical aspects, and generally, Western will provide data and expertise pertaining to the area loads and resources. Recognizing the strong economic data base and modeling capability of FERC, they may also be requested to provide power values. Power values will then be mutually reviewed and agreed upon by Western and Service.

e. Financial Analyses. Power planning programs associated with multipurpose water resource projects require a variety of financial studies to determine marketability, cost allocation, and repayment capability. These studies involve determination of the type and amount of commodity available; i.e., firm capacity, peaking capacity, firm

energy, and surplus energy. They also determine the practicability of integration of new resources with existing resources and the effects on financial feasibility and total resource availability. In addition, the studies determine if the water and/or power rates required to ensure repayment obligations, including obligation to basin funds, are competitive from a marketing standpoint.

For financial analyses as part of the planning process, final determination of study input items such as dependable capacity, average year energy, and availability of non-firm energy are subject to mutual agreement of Service and Western. Power marketing plans will be developed by Western with participation by Service; project cost allocation studies will be performed by Service with participation by Western.

The determination of reimbursable and non-reimbursable costs for all purposes and the analysis of overall costs to be recovered by revenues in accordance with current policy will be performed by Service. Power repayment analysis to determine the marketability of and rates for any additional power generation source will be performed by Western with participation by Service.

f. Environmental and Social Assessments. Assessments of impacts as to environmental and social implications of a potential Federal or non-Federal power development are required during the planning process as a measure of the acceptability of a proposed project development. Inasmuch as these studies involve determinations of environmental and social conditions over the entire area of influence of a proposed project with and without proposed developments, they will be be performed by Service, with Western participating as a cooperating agency commensurate with CEQ regulations. Each agency will be responsible for compliance with NEPA in regard to its individual development responsibilities whenever a common environmental statement is not practical. For studies of transmission needs not directly associated with Service projects, Western will perform such studies.

Exhibit B

DESIGN AND CONSTRUCTION

1. General

The Service and Western have reached accord on certain policies and procedures, as set forth below, for ensuring efficient, effective, and nonoverlapping performance of their respective design and construction responsibilities. Deviations at particular installations for safety, efficiency, or mutual convenience shall be agreed to and documented by each agency.

2. Policies

a. The Service has the responsibility for design of and constructing the authorized resource development facilities. These facilities normally include all equipment and structures located at the facility site up to the high-voltage connections at Service-operated powerplants, pumped-storage plants, and pumping plants. This includes circuit breakers providing control and protection functions to individual operating units, power transformers with their associated arresters and high-voltage switches, located on the plant or as an integral part of the plant installation. High voltage cables which are installed in or immediately adjacent to the powerplant and/or dam shall also normally be considered as Service facilities. (See attachment 1.)

b. Western has the responsibility to design and construct associated power transmission and marketing facilities. These facilities normally include all electrical equipment and structures located on the power system side of the power transformers (or associated high-voltage disconnects, if any) at powerplants and pumped-storage plants. (See attachment 1.) At power-consuming stations and pumping plants where the high-voltage facilities are physically separated at the site from the plant, these facilities normally include all electrical equipment and structures down through the low-voltage side of the power supplying substation with step-down transformers. (See attachment 2.)

c. To the extent practicable, new facilities should be designed and constructed so that principal facilities of each party are physically separated. By agreement, appurtenant devices or electrical equipment of either party may be located in, between, on, or adjacent to the equipment or structures of the other party if mutually determined appropriate for cost effectiveness, convenience and/or efficiency of the total installation.

d. Design and construction of modifications to facilities with joint ownership shall be subject to review and inspection by the other party. Where practicable, modifications shall include consideration of separation of facilities by ownership.

e. Facilities in process of design or construction at the time of this agreement with substantial work accomplished shall be completed to the most logical stage prior to transfer (i.e., design underway shall be

completed before transfer for construction; construction underway shall be completed before transfer). An exception to this is responsibility for CAP transmission facilities which is covered by a separate Region/ Area agreement.

f. Overlapping and duplicate drawings of facilities shall be avoided to the extent practicable. Drawing ownership, approval responsibility, updating and distribution following revision shall remain with the party having the majority interest in the facility, as mutually agreed.

3. Procedures

a. Upon identification of a need for connections between a Service facility and the area power system, contact shall be made between the respective Area and Region staffs to establish the requirements of each agency. This shall be based on the aforementioned policies. When basic agreement is reached, it shall be documented by an exchange of letters which establishes general details and schedules. It should be recognized that adequate time must be allowed for each agency to incorporate new work into its programs and budgets (at least 24 months normally required for major work).

b. Additional interchange of information and correspondence should be subsequently made, including coordination teams, as appropriate, to ensure a coordinated final design and installation.

c. If differences of opinion develop during the coordination process, the problem shall be promptly referred to and escalated through corresponding management levels until resolution is achieved.

d. Engineering drawings of joint facilities shall be in the custody of the party with the majority interest in the facility, and the other party shall be provided with reproducible copies of those drawings. Revisions, corrections, and changes shall be made by the drawing custodian. Copies of the drawings shall be appropriately distributed. Service shall add a Western drawing identification to those pertinent existing and new Service drawings for Western filing and retrieval. Western shall retain the Service drawing identification on those drawings of existing joint facilities that pass to Western custody, and add a Western drawing identification. For new Western drawings, Western shall add a Service drawing number when provided.

e. Overlapping engineering drawings of joint facilities shall be identified as described above. However, revisions, corrections, and changes shall not be made by the drawing custodian without review of the other party.

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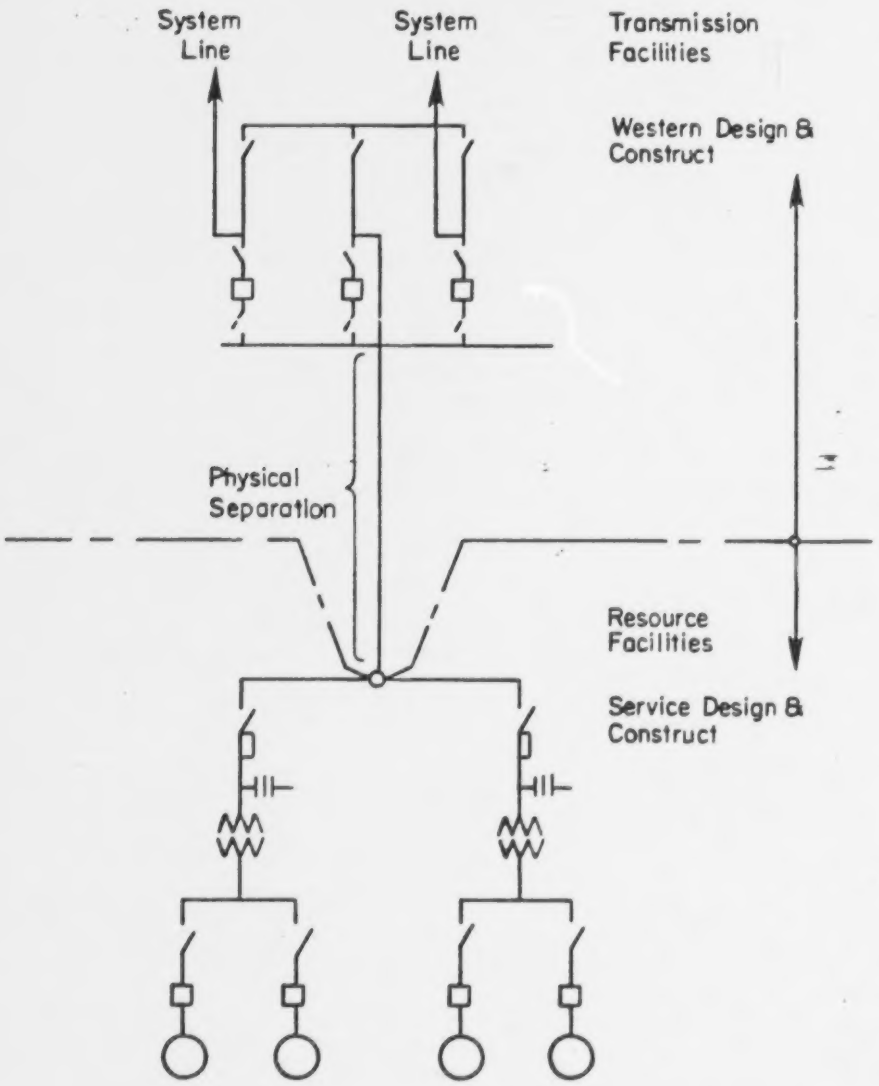
ATTACHMENT 1
Design and Construction Responsibility of Facilities on a Common Site– Resource Facilities



ATTACHMENT 2
Design and Construction Responsibility of Facilities on a Common Site – Load Facilities

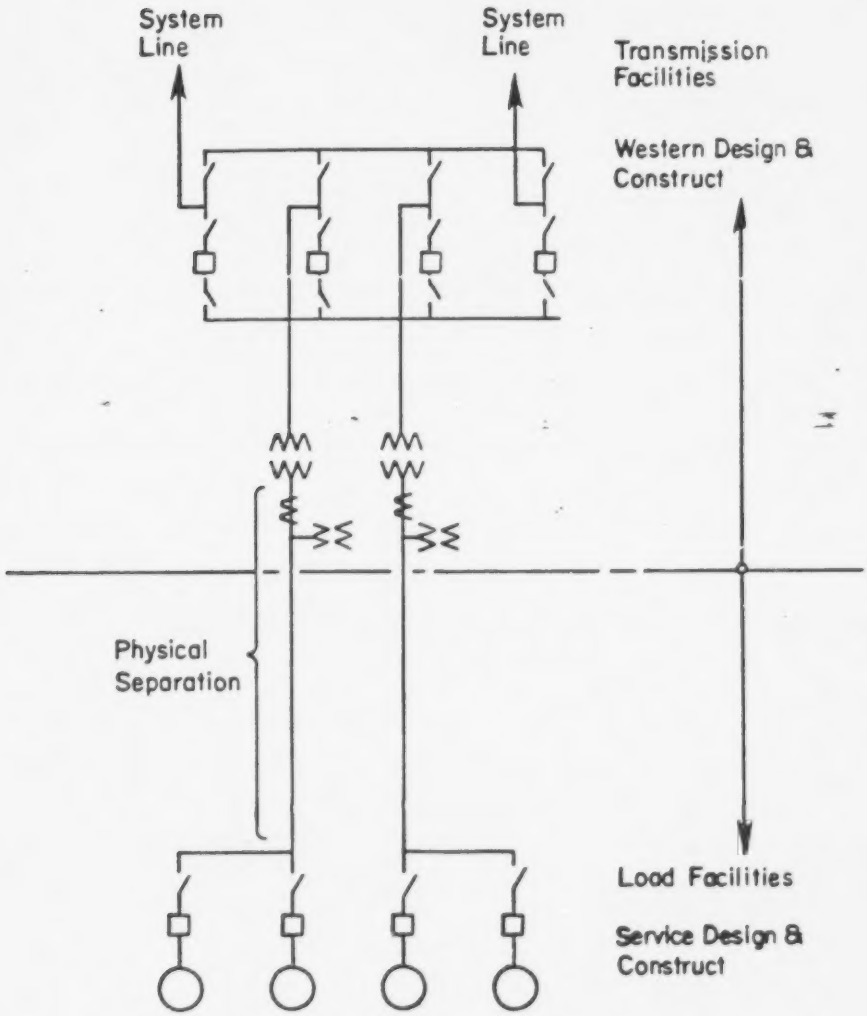


Exhibit C

BUDGETING AND PROGRAM CONTROL

1. Operation and Maintenance of Joint Use Facilities

The Service and Western will program and budget funds for their specific responsibilities. The agencies will mutually agree in writing on a work plan on the O&M of joint use facilities, which includes the fiscal year work and services to be performed and associated funding requirements for each agency by February 1 of the current budget year. The budgeting agency will take the lead in initiating the preparation of the work plan. The estimates will cover a 6-year period, the oncoming budget year (covered by the President's Budget), the new budget year, plus four out years.

By August 15 of the current budget year, each agency will advise the other of any change in the estimate resulting from departmental funding level passback on the new budget year. Further, any changes in budget allowances by the Office of Management and Budget affecting the work plans will be relayed to the other agency within 1 week of receipt of such data.

2. Operation and Maintenance of Facilities Transferred to Western

The Service will continue to provide funding on the newly (February 1980) transferred facilities at the level projected in the 1981 Congressional Budget for fiscal year 1980 and 1981. For fiscal year 1982 and thereafter, each agency will be fully responsible for budgeting all staff expenses and cost associated for its own facilities. This is intended to cover only facilities other than those considered transferred by both agencies on October 1, 1977.

3. Replacement and Addition Items and Construction of New Facilities

Replacement and addition items and construction of new facilities that are not yet in place, but when in place will be a part of the facilities agreed upon for transfer and for which funds are included in either agency's budget for fiscal year 1980 and 1981 should be effectively transferred at an appropriate time so as not to interrupt the orderly flow of normal work activities (i.e., design underway shall be completed before transfer for procurement/construction; procurement/construction underway shall be completed before transfer). The agency that budgeted for the work shall continue to provide funding during fiscal year 1980 and 1981. For fiscal year 1982 and thereafter, each agency shall be fully responsible for budgeting for the work for which it is responsible. When new transmission construction items are identified, they shall be documented by an exchange of letters which establishes general details and schedules. It should be recognized that adequate time must be allowed for each agency to incorporate new work into programs and budgets (at least 24 months normally required for major work). An exception to this is the responsibility for budgeting for CAP transmission facilities which is covered by a separate Region/Area agreement.

4. Program Changes

Modification to work plans and service agreements may be made by mutual consent of both parties subject to the regulations in effect for each agency.

5. Financing

The agency for which work is being performed (the Service or Western) will advance funds to or reimburse the agency performing the work quarterly (or at other periods if mutually agreed). Work will be financed with advanced funds or from other funds on a reimbursement basis as elected by the agency performing the work. Costs chargeable to the financing agency will include all direct and indirect costs reasonably attributable to the work performed. The agency performing the work will classify costs in any reasonable detail requested by the financing agency which is compatible with the performing agency's accounting system.

6. Exchange of Budget and Other Financial Data

The Service and Western will make available to each other all the financial, budget, and statistical information necessary for each agency to meet its responsibilities pursuant to law. The timely interchange of certain financial data and information will be necessary to ensure optimum coordination in the areas of planning, construction scheduling, budget formulation and other operational purposes. Accordingly, such interchange will be made promptly as pertinent data and information become available. Pertinent budget details and funding requirements will be established by work and task agreements consummated pursuant to above paragraphs.

Specific information interchanged shall include:

- approved Congressional Budget documents and program control schedules,

- schedule for estimates covering the 6-year period (oncoming budget year, the new budget year plus four out years) for the annual fiscal year work plans and/or the work service agreements to be performed. Due dates established in section 1 above shall be applicable, and

- financial reports and statistical information as appropriate.

Exhibit D

ELECTRIC POWER RESOURCE AND TRANSMISSION RESEARCH,

DEVELOPMENT, LABORATORY AND TESTING ACTIVITIES

1. General

The Service and Western have reached accord and agreement on certain policies and procedures, as set forth below, for ensuring effective performance of their respective electric power research, development, laboratory and facilities testing activities.

2. Policies

a. Service and Western shall jointly fund and staff an electric power resource and transmission research, development, and testing program. Western shall have administrative control of the system and transmission program. Service shall have administrative control of the balance of the program. This joint program shall be coordinated by a joint committee consisting of four persons, with each party appointing two persons to the coordinating committee. Research and development programs outside the joint program shall not be coordinated by the committee.

b. Specialized, nonroutine materials laboratory work performed by the Service for Western shall be scheduled and performed with the same priority as other Service project work:

(1) Western shall reimburse Service for work performed on a cost basis and funds shall be transferred by SF-10b1.

(2) Western shall provide annually, in advance, an estimate of the amount of work anticipated.

Exhibit E

PROJECT USE POWER

With respect to electric service for project requirements, the Service will continue to administer and provide power under those electric service arrangements now in effect. Western shall be consulted during the development of future water contracts which involve electric service and shall concur with such contracts before they are executed. Modifications or revisions of existing contracts which involve changes in electric services shall be subject to review and concurrance by Western before execution. Rates for such services shall be established by Service. Cost data for transmission service shall be provided by Western. To the extent the Service's power rates are subject to revision, such rates from any project shall be revised by the Service at the same time that Western effects an adjustment in rates to its customers for power from the project.

The Service shall keep Western advised of any future projected project requirements which will require withdrawal of power under contract to preference customers. To the extent that adequate notice is provided, Western shall provide for such withdrawal in its marketing plans. In the event project requirements develop for which withdrawal has not been provided, Western shall use its best efforts to secure for the Service, at cost to the Service, the required power supply in the most economic fashion until such time as withdrawal can be effected. In order that Western may properly reflect project requirements in its operations, the Service shall also provide Western with operational data and forecasts.

Western will provide all transmission service and associated facilities. To the extent that power for project use requirements is not reserved by Service from future multipurpose Service projects, it is the intent that Western will provide the power supply and administer all electric service arrangements.

Exhibit F

POWER SYSTEM OPERATIONS

1. General

The Service and Western will strive to maintain high standards associated with system operations and reliability and comply with the criteria and procedures of the applicable pooling agreements and national electric reliability councils. To this end, the following general operating policies shall apply.

2. Policies

a. Western is responsible for all power system dispatching functions.

b. The Service and Western shall each have operational control of its facilities, except as otherwise agreed. However, the Service and Western will mutually determine the safest and most reasonable point of demarcation of operating jurisdiction over switching and clearances on an Area/Region basis.

c. Annual operating plans and water release schedules are the responsibility of the Service. But, inasmuch as these plans impact Western's resources for meeting firm loads and reserve requirements, the Service will afford Western an opportunity to assess and comment on proposed plans and/or changes thereto. The Service will keep Western routinely informed of the current water operating plan and associated water release and operational parameters. Western will keep the Service informed of power system constraints and marketing plans that affect water operating plans.

d. Western is responsible for power and energy purchases. Western will consult with the Service in estimating the amount and probability of hydro energy that may be produced by water releases. This data will be used in estimating energy purchase requirements for firm power obligations.

e. All power systems are obligated to supply generation capacity to meet their loads moment by moment as required by industry standards. System load control function is achieved by load-frequency control equipment measuring the net flow in and out of the system at the control boundaries and then automatically adjusting generation levels within the control area to keep the net boundary power flow as close to the net scheduled quantity as possible while also attempting to maintain 60 Hz and correct time. This function is called automatic generation control (AGC).

Western is responsible for the AGC function for the Federal power system within water and equipment constraints. The Service shall make available to Western generating capacity to meet the AGC obligation. The Service is responsible for selecting units for control, and setting the limits of operation of the units. The Service and Western will cooperate in developing equipment configurations for the satisfaction of these basic responsibilities.

f. The Service will develop with Western, annual schedules for maintenance of generators and associated facilities that affect generation. Water release requirements, maintenance requirements, and power system generation requirements (including maintenance schedules for customer generators) will be fully considered in developing the final maintenance schedules. Western will coordinate any outage schedules where required with other area utilities. Every effort will be made to arrive at mutually acceptable maintenance schedules. Such schedules will be subject to change by mutual agreement to meet changing system requirements. The Service will coordinate with Western on all changes and delays to the maintenance schedules and notify Western promptly of emergency maintenance.

g. The Service will cooperate with Western to maintain adequate operating reserves by maximizing generating unit availability (minimum down time) within the constraints of safe and reliable unit operation, available manpower and required maintenance. Moreover, the Service will inform Western as soon as possible about forced outages in order that alternate sources of reserves may be arranged.

h. Where practical, the Service and Western will cooperate to optimize the operation of project loads by maximizing the use of off-peak periods for pumping and other means that contribute to reduced cost for satisfying project loads.

i. The Service and Western will cooperate in optimizing reserve generating capacity for system operation. In this regard, the Service will cooperate in qualifying project pumping loads, when feasible and appropriate, for interruptible load for use as spinning reserve capacity in accordance with reserve pooling requirements.

j. The Service and Western will coordinate with regard to generator loading criteria. Generally, the Service will define loading constraints in accordance with machine designs. However, the Service will endeavor to provide the maximum flexibility in those loading schedules, particularly in times of power system emergencies when operation outside normal constraints may be required to maintain system integrity or to restore electrical service.

k. The Service and Western will cooperate in controlling system voltage. The Service will regulate machine voltages within machine and plant equipment voltage constraints so as to provide those bus voltages and/or var flows requested by Western in executing its responsibility for maintaining power system reliability and integrity.

l. Load shedding is commonly practiced by members of the national reliability councils to provide relief to system facilities, to improve operating conditions both during and following major disturbances, and to minimize the amount of and time that customer load might otherwise be interrupted. Western will be responsible for coordinating load shedding programs with area pools and the reliability councils. The Service will cooperate with Western in developing load shedding programs which involve project facilities.

m. Power system stability problems often may most effectively be solved by the addition of supplemental controls for generators. The Service and Western will cooperatively determine the need for and will cooperatively implement these measures.

n. The Service and Western have extensive needs for communication related to the control and monitoring of interconnected equipment. This includes the need for continuous exchange of data by electronic analog and digital means. Satisfaction of these needs in the most efficient and least costly manner requires that the Service and Western work cooperatively to explore means of sharing communications, control equipment and facilities.

o. The Service and Western will cooperatively develop policies for communication between powerplant operators and/or control centers and dispatchers that will simplify and expedite communications wherever practical.

p. Changes in power systems often dictate the need for changes in equipment ratings and characteristics. The requirement for increased circuit breaker interrupter rating due to system growth is an example of this. The Service and Western shall cooperatively determine the need for these changes and program for replacement equipment to satisfy these needs.

q. The Service will make generating units available for condensing operation, when units are equipped for this service, as requested by Western for the purpose of voltage support or to provide additional rotating inertia to the system. When condensing units, the water will be depressed from the turbine, where possible, to minimize water and energy loss. If condensing units are needed for creditable spinning reserves as determined by Western, the Service when practical will provide controls necessary to make condensing units responsive to system frequency decay.

r. Western will prudently define permissible closing phase angles throughout its power system with due consideration given to the proximity of rotating machines, system impedances, and the urgency of closure of the system segment. Western will permit the Service to review and comment on the proposed closing angles and will make every effort to arrive at mutually acceptable angles.

s. While application of generator dropping should not be used as a substitute for designing an adequate and reliable transmission system, power system conditions may warrant the use of this option. The Service will cooperate with Western in implementing generator dropping schemes as mutually agreed to enhance power system stability or the power transfer capabilities of transmission system elements.

t. Western is responsible for performing transmission system computer model studies including power and reactive flows, system stability, and fault currents. Western will provide the results of these studies to the Service upon request or perform special transmission system studies when requested.

u. Western shall have engineering control for specifying protective relay settings associated with the transmission grid. The Service shall have engineering control for specifying protective relay settings for plants and other Service controlled equipment. The Service and Western shall coordinate protective relay application, specifying relay settings and maintenance standards to assure optimum power system reliability and protection of power system equipment.

v. There are a number of requirements, such as system operations and reserve pools, for established uniform standards and testing procedures for determining the generating capacity ratings. Western will provide input to the Service in establishing the standards and testing procedures. The Service will perform the tests and establish the generator ratings to be used in determining the generating capacity. Capacity values will be determined by the Service with consultation from Western.

w. The Service and Western will cooperate to maintain coordinated and consistent switching, clearance, and safety procedures.

x. Each Region/Area shall continue to jointly develop and mutually agree on detailed operating procedures covering all operational aspects between the two organizations. These agreements will include system operations, relay coordination, access to facilities, sharing of tools and equipment, communications equipment, cost assignment and sharing, and other operating details.

y. Western shall have the principal responsibility for administration and operation of the Electric Power Training Center to provide for the power operator training needs of Western and the Service. Service shall have the responsibility for developing the basic requirements for curriculum and classes for Service powerplant operator training and certification. Service will also provide some special lectures and material for this and other training. Western shall have the responsibility for developing curricula and classes for the balance of the training.

This joint program shall be coordinated by cooperative actions of each agency. Training performed by Western for the Service shall be scheduled and accomplished with the same priority as other Western training.

(1) Service shall reimburse Western for work performed on a cost basis, and funds shall be transferred by SF-1081.

(2) Service shall provide annually, in advance, an estimate of the amount of work anticipated.

z. Ownership of metering equipment used to measure the electric power and energy to be made available to either agency hereunder will be as mutually agreed by the responsible Region/Area. Metering equipment shall be maintained and tested in accordance with good utility practice. Should any meter fail to register, the electric power and energy delivered during such period of failure shall be estimated from the best information available.

Exhibit G

REPAYMENT STUDIES

The procedures for preparation of annual repayment studies will be consistent with the principles outlined in the attached April 17, 1979, letter from the Commissioner, Bureau of Reclamation, to the Administrator, Western Area Power Administration; and the Administrator's reply dated May 25, 1979, Provided, that it is recognized that the opening statement in the May 25, 1979, letter regarding studies in which the investment bearing the lowest rate of interest would be paid first relates to specific special studies which were made and is not a criteria for annual repayment studies.

United States Department of the Interior

BUREAU OF RECLAMATION
WASHINGTON, D.C. 20240

IN REPLY REFER TO: D-450
631.

APR 17 1979

Mr. Robert L. McPhail
Administrator
Western Area Power Administration
Department of Energy
P.O. Box 3402
Golden, CO 80401

Dear Mr. McPhail:

This will acknowledge the letter dated March 27, 1979, to Mr. Prichard of my staff from Mr. Harman of your staff requesting our assistance in making power repayment study program modifications and in performing the studies. We will be pleased to provide these services; our Division of O&M Technical Services in Denver will work with your staff, as you suggest, to coordinate the tests and analyze results of the completed studies. We recognize the need for close coordination and cooperation between our agencies in the performance of power repayment, in determination of criteria, and in the rate adjustment process. We therefore believe it is important that we participate in discussions of the Power Rates Council. With your concurrence we would like to send a representative to the April 18 meeting in Washington, DC.

With regard to the subject of power repayment studies, we have been reviewing the suggestions contained in your letter dated April 7, 1978, on the subject "Repayment Responsibility for Reclamation Projects" and in your February 18, 1979, letter where you briefly refer to input on power repayment studies from Reclamation. We are replying separately to your February 18, 1979, letter as it deals with many other subjects. Our memorandum to you dated April 10, 1978, informed you that it was premature to proceed as suggested in your April 7 letter; however, we are now prepared to proceed with your suggestion in the April 7 letter that Reclamation/WAPA power repayment study team be established in each region/area office to coordinate preparation of a single-repayment study for each project in which our two agencies have a mutual interest. We agree with your belief that taking this approach and running studies essentially as they have been in the past will resolve many questions and apparent problems. Upon receipt of your concurrence, we will inform our regional offices to proceed with the repayment studies in coordination with the appropriate area office. The uncompleted studies for fiscal year 1977 and 1978 can be run using the power repayment study computer program maintained at the Engineering and Research Center without modification.

Sincerely yours,

Orrin Ferris

Acting for:
R. Keith Higginson
Commissioner

MAY 25 1979

IN REPLY
REFER TO: A6000

Mr. Keith Higginson
Commissioner
Bureau of Reclamation
18th and C Street, NW.
Washington, DC 20240

Dear Mr. Higginson:

Thank you for the April 17 letter in which you agreed that the Division of O&M Technical Services in Denver would help prepare power repayment studies in which the investment bearing the lowest rate of interest would be repaid first. The Division's assistance was most valuable in preparing the material presented to the Power Rate Council on April 18. We are pleased that Messrs. Bucy and Wallace from your office could be present at the meeting to participate in the discussion and observe the Power Rate Council's review of alternatives to the present method of preparing power repayment studies.

Events of the past months have demonstrated that the concept of region/area office coordination is the most efficient way to prepare a power repayment study which is acceptable to and defendable by each organization. In most offices, informal Bureau of Reclamation/Western Area Power Administration teams already exist. The day-to-day cooperation exhibited between local offices thus far should be sanctioned and encouraged.

Formation of the Department of Energy for the first time permits the five power marketing agencies to seriously consider consistent new ways to repay the investment in many Federal power projects. The power repayment study is a fundamental part of any repayment plan. For the foreseeable future, Western Area Power Administration plans to continue to use the power repayment study computer program maintained at the Engineering and Research Center to prepare the studies. We contemplate that data processing equipment in the area and district offices will continue to have access to the Cyber to perform both routine and special power repayment studies as required.

Sincerely,

Bob

Robert L. McPhail
Administrator

bcc: Area Managers, Billings, MT; Boulder City, NV; Denver, CO; Sacramento, CA; Salt Lake City, UT (with copy of Bureau of Reclamation's April 17, 1979, letter to Western Area Power Administration)

Mr. HALL. We have had, for example, with the Bureau of Reclamation, a basic memorandum of understanding, a basic memorandum of understanding that goes back to 1980, shortly after the Department of Energy was created. It says that Western has responsibility for marketing the Federal power and setting power rates to assure that revenues are sufficient to accomplish repayment of all the allocated investment.

We started from there. We are working on a new memorandum of understanding with the Department of the Interior, and we are hoping also with the Corps of Engineers, to allow us to market this power for them in a new and innovative way that includes non-Federal/up-front financing.

It is important that this be an acceptable, workable solution—where the Government interests are protected, where the ratepayers are protected, and the taxpayers are protected. It could work in a way similar to what is in this bill—where you make the decision, the construction agency decides on the project, and then the appropriate power marketing administration goes out and determines the marketability of that product.

Senator EVANS. I don't have so much trouble with the cost-sharing portion, because I do agree, you know, that we should—those should be assigned appropriately where—especially in the hydroelectric portion of things—I've a later question that gets to the rationale of our long-time policy on the assignment of irrigation charges.

But my question was really not so much on charges or the distribution of charges, but in the decisionmaking as to the feasibility of the project itself, the need for power; where clearly in the northwest currently, Bonneville cannot make that determination unilaterally. They, in fact, must, if they decide a major new resource is required, come to the Pacific Northwest Power Planning Council to get their approval of that new resource.

And my question was really involved in whether in your view this had any affect on that procedure in any way.

I don't want to see us inadvertently repeal a portion of the Pacific Northwest Power Act.

Mr. HALL. Yes, sir. It's a good question. And I would, if I may, like to ask that my colleagues at Bonneville to provide that.

[The information follows:]

The Bonneville Power Administration (BPA) is a power marketing agency of the Department of Energy. The Pacific Northwest Electric Power Planning and Conservation Act (Regional Act) is one of the organic statutes of BPA.

It can be argued that S. 1739, as a later enacted statute, would affect BPA's role in acquiring resources and the criteria it applies in making resource decisions. However, the risk of such conflict involves the question of legislative draftmanship that is best answered by legislative counsels.

The Regional Act contains provisions for the development and acquisition by BPA of hydroelectric project output or capability, both from projects already constructed and those which may be constructed in the future. Section 224 of S. 1739 focuses specifically on new projects, or those authorized by Congress but not yet constructed.

Section 601 of S. 1739 establishes limited cost effectiveness criteria for those Federal hydroelectric projects covered by the bill. The Regional Act deals with the cost effectiveness issue from a broader perspective, requiring consideration of availability, reliability, quantifiable environmental costs, and impacts on fish and wildlife. S. 1739 contains no such express requirement, although compliance with NEPA would

presumably include an examination of nonquantifiable environmental impacts, and the impacts of fish and wildlife.

A savings clause could resolve any potential conflicts between the Regional Act and S. 1739. Inclusion of same in S. 1739 could provide that S. 1739 does not amend, alter, or otherwise affect the power marketing authorities of BPA as established pursuant to the Power Act.

An example of such a savings clause is as follows:

"Neither the Secretary of the Interior nor the Secretary of Energy may exercise any of the authorities under this Act for any project located within the Pacific Northwest as defined by Public Law 96-501, Section 3(14) unless the electric power from any additional hydroelectric facilities to be constructed and operated at any such project is determined by the Administrator of the Bonneville Power Administration to be consistent with those criteria and consideration which would apply were the Administrator to acquire such electric power under the Pacific Northwest Electric Power Planning and Conservation Act, Public Law 96-501."

Senator EVANS. Well, I have several other questions related to that that we will submit as a complete set of questions that all revolve around that same area.

Mr. HALL. Thank you, sir.

Senator EVANS. Now, let me ask the other one, if I may, Mr. Chairman, on irrigation.

I see that on cost sharing generally, as I understand it, the non-Federal portion under these various circumstances are pretty much carrying forward current responsibility, 100 percent on hydro, and varying percentages on different things.

You get down to irrigation, the present law is 100 percent without interest, which comes down to about 10 or 12 percent payback in the bill, the same as the existing law.

I guess first, do you endorse that concept; and, second, what's the rationale, if you do, for a 10- to 12-percent payback on irrigation versus a 100-percent payback on power?

Mr. GIANELLI. Let me try the irrigation part, because the Cabinet Council debated this at some length.

I think the thought was, Senator, that the 35 percent would be a floor, not less than 35 percent, and that ability to pay would be one of the prime considerations. So I don't believe you should look at the 35 percent for irrigation as being anything that's determinant. I think it will be variable, depending upon the ability to pay.

Senator EVANS. I think 35 percent is on flood control. Do I misunderstand, or does the bill extend existing law on irrigation?

Mr. GIANELLI. I think the bill has a section on page 126 that states not less than 35 percent for flood control projects. Also it talks about agricultural water supply.

But I think probably Interior ought to answer more specifically on the irrigation. But that's what I think the language of the bill intended; was that there be not less than 35 percent on——

Senator EVANS. But then that speaks—it's hard to sort all of this out, but it says at the end, "and in the case of projects where agricultural water supply is subject to Reclamation Reform Act . . ." The committee report seems to indicate that there's no change in current law, which is 100 percent without interest.

Does the staff have a comment on their understanding of that, or is that something we had better get?

It seems to me there's a difference between 35 percent and the 100 percent without interest, which usually works out to 10 or 12 percent.

Mr. GIANELLI. Well, Senator, if I could help—although it probably ought to be responded to by Interior.

I think the 35 percent is the repayment of the allocated cost. Under present reclamation law you don't pay the interest component for the use on acreage under a certain amount.

I don't think there's an inconsistency. What it means is that overall, for example, agriculture would pay a lot less, particularly in a reclamation project because, for example, they don't have to pay the interest component where water is used on certain acreages or below.

I think your conclusion is right. But I think that's the way the existing law is with respect to reclamation programs.

Senator EVANS. I understand that. The second part of my question was, do you endorse that current rationale? I mean, is the administration endorsing this portion of the bill?

Mr. HORN. No, Senator, we're not. Essentially the President's policy calls for the case-by-case review. Rather than proceed with a arbitrary 35 percent fixed figure, we negotiate cost sharing on the project-by-project basis—by looking at local benefits, national benefits, ability to pay, total costs and relative need—then try to pick an appropriate up-front contribution figure based on that array of factors.

Senator EVANS. That really doesn't get at it. It seems to me, you talk about not less than 35 percent—even if you charge them 100 percent of construction cost and no interest——

Mr. GIANELLI. Sir, let me try and help. I think the present law with respect to irrigation repayment—which has just gone through a very extensive modification providing some change in the acreage that could receive water from a reclamation project is supported by the administration.

The administration worked very hard on the change of the previous reclamation law which it thought was out of date.

But I think this is talking about something different. This is talking about the allocated cost, and I think Mr. Horn's response is correct. I think Interior wants to look at that on a case-by-case basis, but they still want the provisions of reclamation law to prevail. I think that's my understanding of their position.

Senator EVANS. On whatever allocated costs you come up with?

Mr. GIANELLI. Yes.

Senator WALLOP. Dan, you brought up something which concerned me and which I mentioned in my opening remarks. It does appear that that 35 percent is a rigid minimum the way it's drafted.

The Environment and Public Works Committee report waffles on it a little bit in the report. Then they get down and say "beneficial projects should not be rejected simply because non-Federal interests lack the resources to finance the share of development cost."

Ability to pay determinations are likely to be used infrequently by the Secretary, and the cost-sharing provisions of this act should not prove burdensome. But, you know, when you combine that waffle with the language in there, it sounds to me like it is burdensome, and it's something that clearly we ought to look at.

Senator EVANS. I've got some continuing questions on that.

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Mr. Chairman, I've just got one other—well, one question that it seems to me that somebody ought to take a look at from—or maybe we need to ask the question of the Environment and Public Works staff, but it appears to me at least that there's a gliche somewhere in this bill on page 128, it refers to "request that any non-Federal public sponsor, the appropriate Federal agency shall consider a non-Federal contribution of 25 per centum, and so forth, to be in fulfillment of section 601(a)(7) of this title."

I can't find 601(a)(7). There's only 601(a)(5). What's the problem?

VOICE. I understand it's a typographical error.

Senator EVANS. OK. Just so long as—a typo is one thing, but a missing paragraph 7 is quite another.

Only one other question then. On section 224, here again, I—perhaps the best thing to do is just submit written questions to you.

My concern is potential conflicts or inconsistencies between section 224 and the specific fish and wildlife program authorized by the Pacific Northwest Power Act and developed then by the Pacific Northwest Power Council. It seems to me that there are some potential problems between this section and the current act and the plan. Rather than go into them at this time, I think it would be better if I submitted those written questions, and perhaps Bonneville can help in the answers.

Mr. HALL. Yes, sir, Senator. We would appreciate that, because Bonneville, I think, is the appropriate entity, and they would be prepared to make those responses.

Senator EVANS. Good.

Thank you. Thank you, Mr. Chairman.

Senator NICKLES. Gentlemen, before you leave, just a couple of quick followup questions.

Mr. Horn, are the cost-sharing requirements of title VI applicable to the Bureau, in your opinion?

Mr. HORN. Very clearly the way the law is drafted, we think the Bureau would come underneath these requirements.

Senator NICKLES. One final question. I think there's 10 authorizations for hydropower.

Does the respective power marketing administration have to sign off and say, yes, we have a demand for that power before they could be authorized? Or in your opinion, should they be?

Mr. GIANELLI. Well, I think Mr. Hall has addressed one aspect of the marketing, but I think there are other aspects in which we, in the Army Corps, are exploring; and that is a joint venture.

For example, we have some locks—just to pick out some—down on the Red River in Louisiana, which are in the process of being constructed. There are certain cities down there who filed applications with EERC for a power license at these locks.

I have instructed the corps to work with those cities who are interested in developing the power and to have them actually own the powerplant at the location of this lock. It would be my thought that if that kind of an arrangement can be worked out for joint construction, in effect, of a hydropower navigation facility, then the arrangement that Mr. Hall has talked about wouldn't be necessary because you would negotiate the appropriate share of the cost of that facility. You would allocate that cost to each entity. They would pay those costs. Then, for example, the municipality, if it

built the powerhouse, would actually have title and would have all of the power that was generated from that facility.

We're looking at those kinds of arrangements. We're also looking at arrangements whereby hydropower would be added to an existing corps facility by virtue of a FERC license. If that were done, the constructing agency or the person that got the FERC license would actually own the powerplant and would get all of the power from it. I think the only time you would have a power marketing problem, as described in the act and as contemplated under Mr. Hall's discussion, would be where it was actually a Federal project and the Federal Government constructed the power facility.

We're trying to establish a partnership arrangement which would avoid having the Federal Government construct the power facility in the first instance.

Senator NICKLES. I understand there's 10 authorizations for hydro facilities in this bill.

Do you see a partnership coming on each one of these?

Mr. GIANELLI. Well, I think we would have to take a look at each one of those projects and see if there is someone out there who might be interested in developing a joint project. If they could develop a joint project, we would follow the procedure that I indicated. Otherwise, I think you would have to come to Mr. Hall and follow the procedure of utilizing the marketing agency if the Federal Government was actually going to market the power.

Senator NICKLES. Do you see a possibility of any of these 10 projects being authorized, built, and then not having a buyer for the power?

Mr. GIANELLI. Well, I haven't looked at them, and I don't know whether Mr. Hall——

Senator NICKLES. Would you submit that?

Mr. GIANELLI. We can certainly take a look at them and give you a response as to what it looks like the power marketing ability might be from those particular facilities.

[The information follows:]

Status and Financial Feasibility of Hydropower Projects Proposed for Authorization in Title VII of S. 1739

Scammom Bay, Alaska (Hydropower): Executive Branch review of the report on this project has not been completed, however, the Administration's position on a similar proposal was that local interests should construct. By a letter, dated January 19, 1982, the Alaska Power Administration indicated that the plan "appears to be a workable one that will provide hydropower to the community."

South Central Railbelt Area, Alaska, Hydroelectric Power, Valdez and Copper River Basin: The Administration's position is that local interests should construct this single purpose project. In a power market report, dated January 27, 1981, the Alaska Power Administration concluded that the outlook for financial feasibility was favorable.

Murray Lock and Dam, Arkansas: The Administration supports non-Federal construction of this hydropower addition to an existing Corps project. By letter, dated September 10, 1980, the Corps of Engineers was informed that the Southwestern Power Administration had determined that the addition of hydroelectric power to Murray Lock and Dam is financially feasible.

Arkansas River and Tributaries, Arkansas and Oklahoma, Hydropower, Locks and Dams Nos. 13 and 9 and Toad Suck Ferry Lock and Dam (No. 8): Executive Branch review of this report has not been completed, however, the Administration's position on similar additions to existing Corps projects has been to support non-Federal construction. By letter, dated April 29, 1982, the Southwestern Power Administration certified that the proposed hydroelectric power facilities at Locks and Dams 13, 9, and Toad Suck Ferry are economically and financially feasible.

Metropolitan Atlanta Area Water Resources Management Study, Georgia: Executive Branch review of the report on this project for construction of a reregulating dam has not been completed, however, by letter, dated September 5, 1980, the Southeastern Power Administration acknowledged the financial feasibility of this project.

Lucky Peak Dam and Lake, Idaho: The Administration supports non-Federal construction of this hydropower addition to an existing Corps project. By letter, dated December 27, 1976, the Bonneville Power Administration endorsed the installation of power generation units at the existing Lucky Peak Dam.

W. D. Mayo Lock and Dam 14, Hydropower, Oklahoma: The Administration supports non-Federal construction of this hydropower addition to an existing Corps project. In its September 4, 1980, marketability report, the Southwestern Power Administration indicated the recommended plan is financially feasible.

Blue River Lake, Hydroeletric Power, Willamette River Basin, Oregon: Executive Branch review of the report on this project has not been completed, however, by letter, dated July 18, 1981, the Bonneville Power Administration confirmed that the hydroelectric power output of the project is needed, and that its cost can be repaid from revenues of the Federal system within 50 years of completion.

McNary Lock and Dam Second Powerhouse, Columbia River, Oregon and Washington: Executive Branch review of the report on this project has not been completed, however, by letter, dated October 17, 1979, the Bonneville Power Administration confirmed the marketability of the future hydroelectric power generated at McNary second powerhouse.

Gregory County Hydroelectric Pumped Storage Facility, Stages I and II, South Dakota: Executive Branch review of the report on this project has not been completed, however, by letter, dated June 8, 1981, the Western Area Power Administration stated that this project "would provide an efficient and economical power supply to meet the peaking requirements of our customers."

Senator NICKLES. Do you think that there should be a decision if there isn't any type of joint effort or outside private concern, non-Federal concern that's willing to make a commitment for the power? Do you think there should be a commitment by the power marketing administration prior to authorization of these projects?

Mr. GIANELLI. Let me comment, and Mr. Hall might comment further.

One of our aims is to try and relieve the government of some of its financial obligations in connection with providing funds to construct these projects.

One of the ways that you can do that, as I indicated, is some sort of a contractual relationship which you could convert to a revenue bond issue. For example, in the case of Gregory County, if the State of South Dakota can enter into an arrangement whereby they can market that power, say, to some of the power utilities in the area and convert that contract to revenue bond issue, that's $1 billion that the Federal Government doesn't have to put up.

It seems to me that whatever we do in this whole business, we ought to try and not prohibit utilizing funds from the non-Federal sector to help finance these projects; and I include Federal hydropower projects. If it takes a modification of Mr. Hall's authority, then we ought to do that, because we shouldn't miss the opportunity to take advantage of non-Federal funds and relieve the burden on the Federal budget and, thereby, help the Federal deficit.

Senator NICKLES. I don't disagree with you one iota, and that's kind of where I'm coming from on the question—and maybe, Mr. Hall, you should address it.

If there's not a non-Federal entity that's willing to come in and make that commitment, should the power marketing administrations make the commitment before these projects be authorized?

Mr. HALL. Mr. Chairman, if indeed it is authorized as a part of an existing project, then I think that the power marketing administration should surely be asked will it pay for itself, is it marketable. And we should make that determination.

And the reason—if I may just back track just once more—is because if you follow it through, if indeed it is built and there are not buyers for that power, the existing ratepayers are the ones that have to pay for that bill. That is a fair and legitimate question on their part, "Who is going to pay for the power?"

If, indeed, it is some type of authorization which stands alone, which is going to be built and paid for by non-Federal interests, we have the same interest as Mr. Gianelli, to try to reduce the Federal burden. If, indeed, it is a project that is so configured in a partnership arrangement, like Mr. Gianelli described, that involves no existing ratepayers and it's going to be paid for by some other entities, then I can see less need for us to be involved. If it is basically going to be built by non-Federal entities, they're going to furnish the money. Power would not be marketed in the conventional way that we have been doing it. In that circumstance, I can surely see where a different type of arrangement could exist.

We are trying to be flexible in working with the Corps of Engineers and the Bureau of Reclamation in those type of situations.

Senator NICKLES. Just one other quick question. And Mr. Gianelli, if you would touch on this one—and it's a little a side stream

from our issues, but there's also authorization at $1.2 billion for the Santa Ana River project?

Mr. GIANELLI. Yes.

Senator NICKLES. Is this primarily a flood control project?

Mr. GIANELLI. Yes. Practically 100 percent.

Senator NICKLES. Does it look like it will be a feasible project?

Mr. GIANELLI. Well, at the present time what we're trying to do is to break that project down into component parts so we could build one portion, then take a look at how it's functioning, and then add to it another portion at a later date.

The project is now before the Office of Management and Budget for approval to proceed in that manner. We have not yet had a response from them. It would be my anticipation and hope that that project could be built in stages, that each stage pretty much would stand on its own, and that the local people would be required to pay the appropriate non-Federal share of the cost for that Federal flood control project.

Senator NICKLES. Is that in the same area as the Santa Marguerita?

Mr. GIANELLI. No; the Santa Marguerita is a tributary to the ocean. It's more or less what we would call a coastal stream.

Eventually the Santa Ana flows into the ocean, too, but it has quite a long watershed. I would say the problems with the Santa Marguerita are different from the Santa Ana in that the Santa Marguerita is a very much shorter watershed; doesn't have nearly the volume of water; and doesn't have nearly the complications that the Santa Ana has in terms of the area that would be protected.

For example, the Santa Ana flood control project protects a great portion of Orange County, which is one of the most rapidly growing areas in California. There's a high-urban value to that flood protection. That's not quite the case with respect to the Santa Marguerita; it being a much smaller watershed.

Senator NICKLES. The Santa Marguerita is on the southern end of Orange County, isn't it?

Mr. GIANELLI. Yes, right. It embraces the area around Camp Pendelton. It would be, I guess, actually in San Diego County or perhaps——

Senator NICKLES. It may be, but I was thinking they're very close. And when I was noticing that this project—was it $1.18 billion in 1982 figures, and then Santa Marguerita, I believe, is $350 million.

Mr. GIANELLI. Yes; the Santa Marguerita project, as I indicated and as I understand it, is a multipurpose project. It would provide some water supply that's very badly needed in the area also. But the watershed is much shorter and it doesn't protect near the area, doesn't have near the floor control problems that the Santa Ana does.

The Santa Ana has its origin way out in Riverside County, and it flows, I would guess, much more than a hundred miles before it gets to the ocean.

Senator NICKLES. Have the corps or the administration authorized or endorsed the Santa Ana River?

Mr. GIANELLI. No. The report has been prepared by the corps. I've taken a further look at it in my office and made some recommendations to the Office of Management and Budget, but it has not been officially approved by the administration. We're hoping to get approval from the Office of Management and Budget to submit that to the Congress for authorization along the lines of what I mentioned; that is, break it into smaller parts.

Senator NICKLES. Gentlemen, thank you very much.

Senator WALLOP. Mr. Chairman, I just have one quick question, and it is very quick.

Mr. Horn, could you comment on what affect this legislation, or title VI of it would have on the dam safety laws as currently authorized?

Mr. HORN. Mr. Chairman, that's one of the things that perplexes us. We have some problems with the language in title VI aside from the overall policy, as I indicated in my written statement. And I think some of the questions being posed by Senator Evans got into that, some of the conflict between provisions.

This same question has come up vis-a-vis dam safety.

Our reading of the language in title VI as presently written is that it will supersede existing law, will contravene the President's existing policy, and will also contravene the pending dam safety bill that passed in the House.

We think that it's going to be very important that if this legislation is to move, the dam safety policy, in the pending legislation and in this measure be straightened out.

Senator WALLOP. Thank you very much.

Thank you, Mr. Chairman.

Senator NICKLES. That's a good point, and I appreciate you bringing it out.

Gentlemen, thank you very much.

Senator EVANS. Mr. Chairman, just one comment very briefly before they leave.

Bill, this is probably the last time I guess that you'll appear before us. I just want to say that in the short time I've been here, it's been a real pleasure to work with Bill Gianelli and the corps. We've had lots of action up in the Northwest, and he's always been forthright and he's done a good job and we're well on our way to the solution of some of the more difficult problems we have. Good luck to you, Bill.

Mr. GIANELLI. Thank you, Senator.

Senator WALLOP. I add the tip of my hat to that one, too. Thank you.

Mr. GIANELLI. Thank you.

Senator NICKLES. Gentlemen, I will advise you, too, that there are some additional questions from myself, and also Senator McClure that we would appreciate your prompt response on.

This bill has only been referred to this committee for a short period of time. So if you could respond to those within a week it would certainly be appreciated.

Thank you very much.

Mr. GIANELLI. Thank you.

Mr. HALL. Thank you.

Mr. HORN. Thank you.

Senator NICKLES. Our next witness is Mr. Pat O'Meara, executive vice president of the National Water Resources Association.

Pat, welcome to this committee again.

STATEMENT OF J. W. "PAT" O'MEARA, EXECUTIVE VICE PRESIDENT, NATIONAL WATER RESOURCES ASSOCIATION

Mr. O'MEARA. Thank you, Mr. Chairman.

Senator Evans made reference earlier on to the new national slogan, I guess, of "Where's the beef?" When we come together, Senator, to discuss an $8.5 billion public works bill, I think it might be more appropriate to say, "Where's the pork?" [Laughter.]

At the outset, we want to commend the Committee on Public Works and Environment, particularly chairman on the Subcommittee on Water and Energy, Senator Abdnor, for the dedicated efforts to bring forth the first public works omnibus bill since 1976.

We have neglected our water development program for too long, and we strongly endorse the development—or the enactment of S. 1739.

There are, however, some features of the measure under consideration by this committee today that we do not support.

A major concern we have with S. 1739 is the authorization provided in title IX of the bill which authorizes the establishment of a National Board of Water Policy.

We have to ask the question, "Why?" We endured for nearly two decades a similar expensive bureaucratic arrangement that was ineffective and nonproductive.

To replace the Water Resources Council, the Reagan administration has established the Cabinet Council of Natural Resources and the Environment, and it is proving effective.

From the Council we have a workable set of principles and guidelines which replaced the earlier restrictive principles and standards. We have a general water policy stated in the President's letter of January 24. We have a flexible cost-sharing policy, and we have reestablished State primacy in water rights, and we have implemented the Reclamation Reform Act of 1982.

The old axium says "If it ain't broke, don't fix it." So we would not suggest to replace an efficient management system with another expensive layer of redtape, particularly with a failed concept.

Additionally—and this point has not been made—the Council on Environmental Quality has recently awarded a major contract to study the feasibility of establishing a National Water Resources Research Center, and a National Water Information Clearinghouse.

As we understand the general concept, the proposed National Water Resources Research Center would not be research oriented in the technical sense, but rather a water policy development center.

Until the results of that study are available, we think it would be premature to authorize a National Board of Water Policy.

So those are two reasons we recommend that title IX be stricken from this bill.

Then as others have addressed here today, title VI on cost sharing; in our most recent national convention held in Tulsa, OK, last November, our delegates adopted the following resolution, which

makes three points: To urge support of sound Federal polices on cost sharing by State and local entities for the reimbursable portion of water resource projects that fairly and equitably apply to all water users, whether agriculture, municipal, or industrial, and which recognize the already-substantial historical participation by the States and local entities in the cost of water projects.

The second point is that opposition to changing any cost imposed by Federal laws or regulations on any State or local entity or on non-Federal sponsors which have been historically treated as non-reimbursable.

And third, cost sharing shall not be imposed unilaterally on State or local entities where the reclamation project in question was authorized by Congress at a time when cost sharing was not being required.

It is important to note that President Reagan has rejected the idea of rigid cost sharing and has opted instead for a flexible cost-sharing policy.

We agree with the percentages set forth in S. 1739, that they are reasonable. But we believe they should be guidelines as to cost-sharing proposals and not be cast in concrete as the present provisions of the bill may establish.

Water projects vary widely in concept, construction, purpose, and operation. To apply a single set of cost-sharing criteria that would apply across the length and bredth of this great land where we experience vastely different conditions could well prevent the construction of many feasible projects.

We think it is essential to provide administrative flexibility to determine the cost-sharing terms of future projects.

But I would call the committee's attention on page 126 in title VI, paragraph 5, that the bill says, "Urban and rural flood protection, rural drainage, or agricultural water supplies not less than 35 percent, subject to an ability to pay determination under section 603". And section 603 then reenforces that to say, "Any cost-sharing agreement under this act with a non-Federal private or public sponsor of an urban and rural flood protection, rural drainage or agricultural water supply project shall be consistent with the ability of any such non-Federal sponsor to pay."

So there is a caveat in these percentages, particularly as it relates to the agricultural water.

Title VIII of the bill authorizes a loan program to provide funds to renovate deteriorated municipal and industrial water supply systems.

There is an urgent need for this program, and we urge its approval.

We would suggest an amendment to title VIII. There are many projects where the Bureau of Reclamation provides municipal and industrial water. In those instances, we believe it would be good business practice to authorize the Bureau to make the loans to improve water supply systems, rather than require them to obtain such loans from the Corps of Engineers.

Senator, I had planned on making some comments about the $7.5 million for fish and wildlife mitigation, but I simply didn't have time to go into all the provisions of that bill. But it does give me some concern that the $7.5 million seems to be a very arbitrary

figure, regardless on the size of the project, and it may also have large impingement on State primacy in water.

So while I don't come forward with any direct comments on that, I would like to call that to the attention of the committee, that there may be some real problems with mitigation under that title.

Thank you very much, Senator.

[The prepared statement of Mr. O'Meara follows:]

STATEMENT

of

J.W. "PAT" O'MEARA

EXECUTIVE VICE PRESIDENT

NATIONAL WATER RESOURCES ASSOCIATION

before the

COMMITTEE ON ENERGY AND NATURAL RESOURCES

UNITED STATES SENATE

APRIL 9, 1984

Mr. Chairman and Members of the Committee: Thank you for the opportunity to appear before this Committee to present the views of the National Water Resources Association in this sequential referral hearing on **S. 1739.**

At the outset, we want to commend the Committee on Public Works and the Environment, particularly the Chairman of the Subcommittee on Water and Energy, Senator James Abdnor, for the dedicated efforts to bring forth the first public works omnibus authorization bill since 1976. We have neglected our water development programs for too long and we strongly endorse the enactment of S. 1739.

We also want to compliment this committee for expressing your interest in this legislation by requesting sequential referral. We know you are acutely aware of the limited time

remaining for legislative consideration in this session of the Congress. The early date you have set for this hearing is a clear indication to us that this is not a delaying tactic on your part, but a sincere effort to perfect this bill by amendment, particularly where it addresses issues that properly come under the jurisdiction and purview of this Committee.

The Committee is aware, we know, that a somewhat larger public works authorization bill is under consideration in the House and a push is under way by Representative Roe to bring that bill to the floor for a vote at an early date. We are optimistic that an omnibus public works can be enacted by the 98th Congress.

There are some features of the measure under consideration by this Committee today that we do not support.

Title IX - Water Resource Planning.

A major concern we have with S. 1739 is the authorization provided in Title IX of the bill which authorizes the establishment of a National Board of Water Policy. We have to ask the question, Why? We endured for nearly two decades a similar expensive bureaucratic arrangement that was ineffective and non-productive.

The Reagan administration has established a Cabinet Council on Natural Resources and the Environment and it is proving effective. From the Council, we have a workable set of Principles and Guidelines which replaced the earlier restrictive Principles and Standards; we have a general water policy as

stated in the President's letter of January 24. We have a flexible cost sharing policy and we have pending before the Congress a request for new starts for water projects. The Cabinet Council is a high level group that is getting the job done. The old axiom says "if it ain't broke, don't fix it."

We should not replace an efficient management system with another expensive layer of red tape, particularly with a failed concept.

Additionally, the Council on Environmental Quality has recently awarded a major contract to study the feasibility of establishing a "National Water Resources Research Center" and a "National Water Information Clearinghouse." As we understand, the general concept, the proposed National Water Resources Research Center would not be research oriented in the technical sense, but rather a water policy development center. Until the results of that study are available, we think it would be premature to authorize a National Board of Water Policy.

For the foregoing reasons, we recommend that Section IX be stricken from S. 1739.

Title VI - Cost Sharing.

At our most recent national convention held in Tulsa, Oklahoma last November, our delegates adopted the following resolution:

RESOLUTION 83-1

COST SHARING

"To urge:

1. Support of sound Federal policies on cost sharing by State and local entities for the reimbursable portion of water resource projects that are fairly and equitably apply to all water users whether agricultural, municipal, or industrial and which recognize the already substantial historical participation by the States and local entities in the cost of water projects.

2. Opposition to charging any costs imposed by Federal laws or regulations on any State or local entity, or on any non-Federal sponsors which have been historically treated as non-reimbursable.

3. Cost sharing shall not be imposed unilaterally on State or local entities where the reclamation project in question was authorized by Congress at a time when cost-sharing was not being required."

Attached to my statement, so that it will be a part of the record of this hearing, is a copy of a January 24 letter written by President Reagan to Senator Paul Laxalt which sets for the Adminstration's views on water policy. It is important to note that the President has rejected the idea of rigid cost sharing percentages and has opted instead for a flexible cost sharing policy. We agree that the percentages set forth in S. 1739 are reasonable, but we believe they should be guidelines as to cost sharing goals, and not be cast in concrete as the present provisions in the bill would establish.

Water projects vary widely in concept, construction, purpose and operation. To apply a single set of cost sharing criteria that would apply across the length and breadth of this great land where we experience vastly different conditions could well prevent the construction of many feasible projects. We think it is essential to provide administrative flexibility to determine the cost sharing terms of future projects.

Title XIII - Water Supply Loans.

We would also like to direct the attention of the Committee to Title VIII of S. 1739 which authorizes a loan program to provide funds to renovate deteriorated municipal and industrial water supply systems. There is an urgent need for this program and we urge its approval. According to the Pittsburg Equitable Meter Company, a tiny 1/32 inch hole in a water pipe operated at 60 pounds of pressure will leak nearly 20,000 gallons of water in just three months.

We would suggest an amendment to Title XIII. There are many projects where the Bureau of Reclamation provides municipal and industrial water. In those instances, we believe it would be good business practice to authorize the Bureau to make the loans to improve water supply systems rather than require them to obtain such loans from the Corps of Engineers.

Again, thank you for the opportunity to present these views in support of S. 1739.

THE WHITE HOUSE

WASHINGTON

January 24, 1984

Dear Paul:

Some time ago, you and 14 of your colleagues wrote to me expressing your concerns regarding water project development. I appreciated receiving this valuable counsel which has helped crystalize the extensive discussions within the Administration on this vital subject.

We all agree on the goals. These goals are to revitalize the magnificent water development programs launched early in our Nation's history. The Federal-State partnership has succeeded even beyond the dreams of those who developed the concept so many decades ago. This partnership has helped create abundant year-round water, electric and food supplies; reduced flooding, and provided low-cost inland, coastal and oceanic waterborne transportation. In addition, millions of Americans have enjoyed vast new opportunities for water-related recreation.

Providing enough high quality water promptly to those who need it is a task that has confronted Americans since the earliest days of our national experience. In the first summer at Plymouth, the Pilgrims experienced a summer drought that nearly ruined their crops. More than 350 years later, Americans had to contend with flooding on the Mississippi and the Colorado, and drought throughout most of the rest of the Nation. The lesson of these events is clear. Providing enough high quality water where and when it is needed is a never-ending process.

This Administration is committed to working with the States, local entities and those private sector interests concerned with water development all across America. We are rebuilding the Federal-State partnership so that we can resume water development efforts to avert water crises in the coming decades. We have accomplished the following:

- Re-established the policy of State primacy in water rights resulting in less interference from the Federal government in water resources management.

  -- Reinforced State primacy by the repeal of a Federal non-reserved water rights opinion.

  -- Established and successfully implemented a process for negotiated settlements of Indian water rights disputes.

  -- Offered States the option of having Federal reserved water rights within their boundaries expeditiously inventoried and quantified to enhance their management capability.

- Implemented the Reclamation Reform Act of 1982 to recognize advances in agricultural technology and the market economy based on the family farm, giving these farmers an opportunity to build commercial operations without unrealistic limitations on their access to land and irrigation water.

- Established new Principles and Guidelines for water project planning to remove cumbersome regulations and promote flexibility in planning, thereby encouraging water resources development.

- Elevated water resources decisionmaking to the level of the Cabinet Council on Natural Resources and the Environment, whose Chairman Pro Tempore is the Secretary of the Interior.

- Presented to Congress new project construction proposals incorporating increased non-Federal financing based on the tangible economic returns produced by the projects.

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All of these actions have helped to rebuild and strengthen the foundations of the Federal-State partnership so we can move forward to develop much needed, environmentally sound and economically prudent water resources projects. We have made numerous studies and conducted extensive discussions within the Administration in quest of ways that the Administration, the Congress, the States, and the American people can develop true partnership arrangements that recognize the realities of today's economics and tomorrow's environment. We are gratified that Congress is now addressing the key issues related to water project cost sharing and financing.

Water development needs, geography, climate, economy, fiscal capacity, and Federal interests all vary from State to State, and from region to region. Furthermore, the Federal government has made prior commitments to individual States with regard to water development within their borders. During the past months, I have fully considered the views expressed by you, your colleagues, the Cabinet Council on Natural Resources and the Environment, and many of the Governors regarding how the Federal government might participate in water project development and project financing under these conditions. Traditionally, many Federal water project beneficiaries have repaid the construction costs of their projects, but we all agree new partnership arrangements will be necessary to finance any additional projects in the future.

It is time to conclude the discussion and to establish a national water project financing policy so that we can get on with the job of completing projects where commitments already have been made and undertaking new construction starts to meet the country's future needs.

Indeed, the construction of storage reservoirs has not kept pace with the increasing demand for water. As a result, our water supply is less reliable and more vulnerable to drought than it was a decade ago. We must develop even better ways to work together effectively. We will have to make the best use of the water we have if we are to avoid serious future problems. I am convinced that by working with State and local governments we can solve the problems of flood, drought, and quality.

The water project financing and cost-sharing policy of this Administration is:

- All Federal water development agencies will continue to seek out new partnership arrangements with the States and other non-Federal interests in the financing and cost sharing of all proposed projects. Each such agency will negotiate reasonable financing arrangements for every project within its respective area of responsibility.

- Prior commitments to individual States with regard to water development within their borders must be considered and shall be a factor in negotiations leading up to project construction.

- Consistency in cost sharing for individual project purposes, with attendant equity, will be sought.

- Project beneficiaries, not necessarily governmental entities, should ultimately bear a substantial part of the cost of all project development.

- Safety problems at Federal dams should be corrected as expeditiously as possible. The cost of safety work should be borne by the Federal government. However, if additional economic benefit results from the modification, appropriate cost sharing among the beneficiaries shall be allocated by the appropriate Secretary. Criteria to determine dam safety designation shall be developed by an interagency technical team in consultation with non-Federal parties.

- The costs incurred by the Federal government in project planning generally will be shared with project sponsors. Specific arrangements will differ among agencies because of their differing planning, authorizing, and funding procedures.

- Once financing, cost sharing, and cost recovery arrangements have been agreed to, they will be reviewed by the Office of Management and Budget and submitted to the Congress for ultimate disposition.

This process will result in arrangements that are workable, fair, just, and practical. It will put into place the final building blocks in an improved program to meet America's current and impending water needs while recognizing Federal budgetary realities.

I sincerely appreciate your cooperation on this subject. Working together, we can move ahead into a new era of water project development for the benefit of the Nation and all Americans.

Sincerely,

Ron

The Honorable Paul Laxalt
United States Senate
Washington, D.C. 20510

Senator NICKLES. Thank you very much, Mr. O'Meara.

There already has been some questions raised, as I'm sure you're aware, on the mitigation question. I appreciate your comment, too, concerning the amount.

You made a couple of comments on the cost-sharing proposal. And you also read, I guess, a section dealing under 603 that gave basically an out or under an inability to pay.

Do you think that that is sufficient, and that the cost-sharing proposals are flexible enough then?

Mr. O'MEARA. Well, I'm not sure that just that language gives all the flexibility that we require. I think I would rather back off and wait to see what kind of draft legislations the Department of the Interior presents as a response to your request and comment on that proposal rather than what's in this bill to see if we think it's an improvement.

Senator NICKLES. I was going to ask you a subsequent question, and I guess I will. Do you think that we should come up with substitute language and guidelines in accordance with the President's guidelines, or strike it and allow those to be done administratively as they have in the past?

Mr. O'MEARA. Well, I would like to see some legislation drafted in accord with the President's letter.

You're all familiar with that letter. You were signatories to the letter that went to the President that elicited that reply, and I think your letter set forth very strong points that the President responded to very favorably. And so not to cast that away when we have that on the record, I would think that the Department of the

Interior could come forward with very good language, and I would like to wait and comment on that, if I may.

Senator NICKLES. Well, that's what we will do, too.

There's some question in my mind whether it would be better to strike the guidelines that are in this bill as they are, or a question of whether or not to——

Mr. O'MEARA. I certainly don't want them to be any more than guidelines. We don't want to set these numbers in concrete. It just will not work on project after project.

Senator NICKLES. I appreciate your comments.

Senator Wallop?

Senator WALLOP. Pat, I appreciate your comments, too.

And I would think that the condemnation provisions would give you pause that——

Mr. O'MEARA. That's the serious part of this thing, that the Government now wants rights to come into the States and condemn.

Now, they have had some rights in the past on some different things, but this seems to broaden their rights for condemnation beyond anything that they've had in the past.

Senator WALLOP. It causes me really serious problems. I can't believe that this is a way to get water projects underway. I mean, no State I know of is going to tolerate that without testing it some place.

Mr. O'MEARA. On the issue that was raised by Senator Evans on the percentages and the interest free. Now, we're supporting that we have up-front financing as called out in this bill by guidelines. Now, that up-front financing, as you well know, will force the water agencies to go into the public market, and they're going to pay their interest there, and they're going to pay the going rate. There's no foregone interest on the up-front money. And this is a radical change in the policy we've had in the past.

Senator WALLOP. Thank you.

Thank you, Mr. Chairman.

Senator NICKLES. Thank you, Senator Wallop.

Just one final question, Pat.

You mentioned title VIII, which deals with water supply loans, and would authorize, really, a new program for the corps to make loans for a whole variety of purposes.

Has the corps been doing that?

Mr. O'MEARA. No, loans have not been authorized, Senator. And there has been a rather ground swell of activity under study to come to the Federal Government and ask for grants to replace outworn—worn out municipal distribution systems. And if we undertake this as a grant program, we're undertaking a $25 to $35 billion program of grants.

Now, the need is there. There's no question about it. The municipal water systems, particularly in the older cities in the East, are worn out. And one of the problems is, of course, the people have not been charged enough for their water to lay back an ongoing maintenance and upgrading program

One of the cities that's most bothered by this is the city of Boston, MA, where they estimate that up to half the water delivered to the system is lost through leaks in the system before it's

delivered to the customers. Yet the customers up there pay about the lowest water rate of anybody in the country.

Now, after they have not been charged an adequate sum, for good business practices, they've been talking about coming to the Federal Government and say we want a grant because we have to have our water system. And we would go far enough along to say yes, we'll help you to fix your water system, but it's got to be on a loan basis, not by grant.

Senator NICKLES. I appreciate your comments. And I'll tell you that I have some reservations about this new loan authority and also, the amounts are large, beginning with about $400 million and $800 million by 1989, but that would be just scratching the surface compared to the demand, and you could really end up with enormous——

Mr. O'MEARA. Senator, New York City has one new conduit coming into the city that they wanted to build another tunnel under the river at a cost of $5 billion.

Senator Moynihan was talking about a grant for that tunnel. And that's what I'm talking about, if we start giving out grants in that size, the Federal Government's not going to be able to stretch very far. So if we could even turn that demand over into loans, I think we have gone a long ways in protecting the Federal treasury.

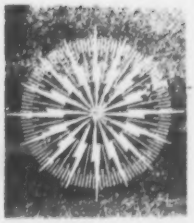
Senator NICKLES. Thank you very much for your comments and appearance again before this committee.

We will keep the record open for another week, and would appreciate your prompt response to the questions—additional questions submitted by the committee members.

The hearing is adjourned.

[Whereupon, at 3:40 p.m., the hearing adjourned.]

[Subsequent to the hearing the American Public Power Association submitted the following statement:]



AMERICAN PUBLIC POWER ASSOCIATION

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President ROBERT L. McKINNEY
President-elect JACK K. SPRUCE
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New Smyrna Beach, Florida
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Taunton, Massachusetts
WALTER A. CANNEY
Lincoln, Nebraska
BILL D. CARNAHAN
Fort Collins, Colorado
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Missouri Basin Municipal Power Agency
Sioux Falls, South Dakota
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Toronto, Ontario, Canada
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Duncan, Oklahoma
GORDON W. HOYT
Anaheim, California
PAUL LANE
Los Angeles, California
JACK H. MADISON
Tillamook People's Utility District
Tillamook, Oregon
RICHARD E. MALON
Columbia, Missouri
N. L. McCARTNEY
Springfield, Missouri
THOMAS H. McCAULEY
Moorhead, Minnesota
MIKE McDOWELL
Committee on Power
for the Southwest
Edmond, Oklahoma
ROBERT L. McKINNEY
Cowlitz County Public Utility District
Longview, Washington
JOHN S. McQUEEN
Chattanooga, Tennessee
WILLIAM MESCHER
Santee Cooper
Moncks Corner, South Carolina
TIM MORAWSKI
Holland, Michigan
ERNEST J. MULLEN
Kaukauna, Wisconsin
PAUL J. NOLAN
Tacoma, Washington
PAUL W. OSLER
Indiana Municipal Power Agency
Indianapolis, Indiana
C. M. PERKINS
Salt River Project
Phoenix, Arizona
GEORGE D. REICH
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Nebraska Public Power District
Columbus, Nebraska
HAROLD SCHREBOUT
Sioux Center, Iowa
WYLIE H. SMITH
Dothan, Alabama
JACK K. SPRUCE
San Antonio, Texas
DONALD L. STOKLEY
Municipal Electric Authority of Georgia
Atlanta, Georgia
WILLIAM C. WALBRIDGE
Seminole Electric Cooperative
Tampa, Florida
ROBERT C. YOUNG
Burlington, Vermont

April 16, 1984

The Honorable James A. McClure
Chairman
Committee on Energy and Natural
Resources
SH-212 Hart Senate Office
Building
Washington, D.C. 20510

ATTN: Russell R. Brown

Dear Mr. Chairman:

On behalf of the American Public Power Association, I request that the enclosed statement be included in your committee hearing record on S. 1739, the Water Resources Development Act of 1983.

Sincerely,

Alan H. Richardson

Alan H. Richardson
Assistant Executive
Director

AHR/slm
enclosure

cc: The Honorable Don Nickles
Chairman
Subcommittee on Water and Power

Statement
of the
AMERICAN PUBLIC POWER ASSOCIATION
Submitted to the
Senate Committee on Energy and Natural Resources
on
S. 1739,
WATER RESOURCES DEVELOPMENT ACT OF 1983

April 16, 1984

The American Public Power Association (APPA), the national service organization representing more than 1,750 local publicly owned electric utilities throughout the United States, submits this statement to the Senate Energy and Natural Resources Committee on S. 1739, the Water Resources Development Act of 1983.

APPA supports the cost sharing provisions of federal hydroelectric projects contained in Title VI of S. 1739, as reported from the Senate Environment and Public Works Committee. We urge this committee to oppose any change in these financing provisions for federal hydro projects.

As reported from the Senate Environment and Public Works Committee, the bill retains the existing policy on federal hydroelectric powerplant construction, which requires that 100 percent of the project costs attributed to power are repaid over the life of the project by power users. The bill does not require upfront financing of hydro projects. It allows, but does not require, power marketing agencies to accept advances of funds by power purchasers, which are transferred to the construction agency for constructing the project. The bill requires that all power from federal projects, whether financed by private or public funds, be marketed through the appropriate power marketing agencies under preference provisions. (Title VI, Section 601 (a)(1).)

The Administration objects to the financing provisions of the bill. In testifying before your committee on April 9, Deputy Under Secretary of the Interior William Horn said that the cost sharing provisions of S. 1739, as reported, conflict with the President's policy on cost sharing. Quoting from the President's January 24 letter to Senator Paul Laxalt, Mr. Horn said the policy of the Administration is:

> All federal water development agencies will continue to seek out new partnership arrangements with the States and other non-Federal interests in the financing and cost sharing of all proposed projects. Each such agency will negotiate reasonable financing arrangement for every project within its respective area of responsibility.

Although the letter is not specific with respect to the amount of upfront funding required, Mr. Horn said before this committee that the new policy "encourages more non-Federal up-front financing of both the planning and construction phases of a project." It is evident that the new policy does more than encourage upfront financing. Instead, it requires it for all projects, or the projects will not be built.

APPA understands the budgetary restraints that prompt nonfederal financing proposals, and we have given much thought to alternative means of financing federal projects.

Public power systems, entitled to preference in purchasing power produced at federal dams, are concerned that, under Administration proposals, any entity, whether public or private, which advances upfront construction funds is usually given either power or revenues in proportion to the amount of the contribution <u>without regard to preference</u>. There are 510 public power systems that buy power from the five power marketing agencies.

Preservation of preference rights of public power systems is our paramount concern in any financing plan. The preference concept is based on the principle that the nation's water resources belong to the people, and the

benefits of these resources should be distributed directly to the people when possible. In addition, it promotes competition with private utilities. Preference is essential to preserve the consumer owned utility movement in this country.

APPA has measured various nonfederal financing proposals according to the following criteria:

1. Will the preference rights of local public power systems and rural electric cooperatives be fully protected?

2. Will the federal government retain control over project selection, development, and operation?

3. Will the power produced be marketed through the federal power marketing administrations?

4. Will power be developed and marketed at the lowest possible cost?

Without question, preference does not mean less than cost-based rates. The government fully recovers its costs. Power from federal projects is sold by the power marketing agencies to preference customers at rates which must cover all costs expended by the federal government, including interest, amortization, and maintenance of power facilities over a period of not to exceed 50 years.

Preference customers are 100 percent cost-sharers in multiple-purpose hydroelectric power projects. Indeed, preference customers often pay more than the cost of a project's power features since, under reclamation law, they also pay, in addition, substantial amounts toward repayment of costs allocated to irrigation features of projects. We have supported, and continue to support, this role for hydro power generated at federal projects.

We object, however, to indiscriminately lumping power, which pays its way 100 percent, with other functions, for example, navigation and flood control, the costs of which traditionally have been largely borne by the taxpayers as a

whole, rather than by project beneficiaries. This gives rise to the impression that power users are not carrying their full burden. That is obviously not the case.

With respect to S. 1739, it is interesting to note that the Administration financing plan was included in the bill, as reported from the Senate Subcommittee on Water Resources of the Environment and Public Works Committee. The subcommittee bill would have: (a) turned over to nonfederal parties future hydroelectric development at Corps of Engineers and Bureau of Reclamation dams, and (b) voided traditional preference to consumer owned utilities in the selling of power produced at any new federal facility.

However, the full committee heard consumer owned utilities' objections to these financing provisions of S. 1739, and changed those provisions. As stated in the Senate Environment and Public Works Committee report (Senate Report 98-340 at p. 53), the cost sharing section of the bill:

> . . . reaffirms long-established policies governing the marketing of hydroelectric power developed at Federal projects. Preference in the marketing of such power is given to public power systems and rural electric cooperatives. The power shall be marketed at uniform, area-wide rates with delivery to purchasers at load centers. Rates are established on a cost basis.
>
> In addition to returning all of the operation, maintenance and replacement costs attributable to the production of power, all of the capital investment allocated to power is recovered, with interest, over a period of 50 years from the time each power feature (including allocated joint costs) becomes commercially operable, or within the useful life of such feature, whichever is the lesser. In addition, there will be amortized, over the repayment period established by or pursuant to law, other project costs assigned in accordance with law for the return from power revenues and reimbursable costs allocated to irrigation under the Federal reclamation laws that are beyond the repayment ability of the irrigators.
>
> Preference to consumer-owned electric utilities in the use of the output of Federal projects is a concept which dates back three-quarters of a century, and has been reiterated in more than 30 statutes. Excess electric power generated by Federal projects is sold to State and local governmental entities and to private, non-profit organizations, when those groups are able and willing to purchase the electricity. To the extent that these preferred

customers are not willing to purchase the power, it may be sold to investor-owned utilities.

By assuring the availability of power to municipally-owned utilities and non-profit cooperatives, the preference clause bolsters competition.

It is clear from the committee report that the majority of Senate Environment Committee members share the concerns of consumer owned utilities that preference be preserved, that the federal government continue to exercise considerable control over the development of hydro power at federal projects, that power from such projects be marketed through the power marketing administrations, and that the rates for such power be based on cost of production.

We urge this committee to consider these criteria and to retain the present cost sharing provisions on financing federal hydroelectric projects in the bill, as reported by the Senate Environment and Public Works Committee. The Administration's cost sharing proposal should be rejected.

APPENDIX

Responses From the Department of the Interior, Department of the Army, and the Department of Energy to Additional Committee Questions

United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

JUN 14 1984

BY SPECIAL MESSENGER

Honorable James A. McClure
Chairman, Committee on Energy
and Natural Resources
United States Senate
Washington, D. C. 20510

Dear Mr. Chairman:

Enclosed is the transcript of the hearing before the Committee on Energy and Natural Resources on April 9, 1984, regarding S. 1739, the Water Resources Development Act.

Also enclosed are responses to additional questions raised as a result of the hearing.

We have reviewed the transcript and corrected the remarks of the Departmental witness.

Sincerely,

James T. Christy

James T. Christy
Legislative Counsel

Enclosures

QUESTIONS SUBMITTED BY SENATOR MCCLURE

General Questions:

Interior: Please provide comments and views on the following provisions of S. 1739: Sections 210, 216, 217, 219, 220, 224, 301, 308, 313, 314, 316, 324, 328, 701 (b) (10), titles IV, VI, VIII, and IX.

A. Section 217. We agree that all suits involved in the use of Missouri River water in a coal slurry development shuld be concluded as expeditiously as possible, consistent with the interests of all of the parties.

A. Section 219. Ogallala Research and Development Act--While we recognize the seriousness of the problem being addressed we oppose this section.

(1) This section is unnecessary given the great amount of research already conducted by numerous State and Federal agencies, and the likely passage of other legislation under consideration address the same areas: H.R. 71, the High Plains States Ground Water Demonstration Program Act, and H.R. 2867, an amendment to the Solid Waste Disposal Act creating a National Groundwater Commission are awaiting floor action.

(2) H.R. 71 provides for planning and construction of a number of aquifer recharge projects in Ogallala Aquifer States as well as in other Western States. These projects will demonstrate the feasibility of various means of aquifer recharge.

A. Section 224. We generally believe that provisions for mitigation of any loss of fish and wildlife resources should be part of water resource development. We are also convinced that these provisions should apply within reason to all Federal water resource agencies. It is the practice of the Bureau of Reclamation to implement authorized mitigation of fish and wildlife losses concurrently with project construction to the extent practicable. This is just good construction management.

On occasion, the Bureau has provided for mitigation of fish and wildlife losses at projects already constructed but usually this is done when the Congress indicates an existing need. The general authority this section would provide is unnecessary, and consequently we oppose section 224. Moreover, we oppose acquisition of water rights by condemnation.

A. Section 314. We defer to the Corps of Engineers. The extensive experience of the Bureau of Reclamation in irrigation projects and the Department of Agriculture in conservation techniques would logically require that the Secretary of the Army should only implement a New England cropland irrigation research program after consulting and coordinating with the Secretaries of the Interior and Agriculture.

A Section 316. This section does not apply to Department of the Interior and we defer to Corps of Engineers.

A. Section 328. We cannot support the proposed name change in section 328. Units of the National Park System are usually named for the features, events, or people they represent. The National Park Service (NPS) and the Congress have pursued a fairly consistent policy of refusing to name or rename units of the national park system in honor of persons living or dead, except for historical sites established solely to commemorate individuals associated with those sites. We recommend, instead, that consideration be given to dedicating the Big South Fork National River and Recreation Area to John Sherman Cooper, and that appropriate memorialization be authorized in lieu of a complete name change.

A. Section 701(b)(10). This section would authorize the Gregory Country, S.D. Pumped Storage Facility with an expected cost of $1.28 billion. Included in that project is $100 million for associated water supply and irrigation features to be undertaken by the Secretary of the Interior.

In 1981, Reclamation considered a traditional 50,000 acre irrigation development in conjunction with this pumped storage facility. Using 1980 costs and energy values the project was found economically infeasible, so the study was not pursued. Reclamation has not studied in detail municipal water supply associated with the Gregory County project, so we cannot comment on the feasibility of such measures.

A. Title IV. This title would authorize the appropriation of funds to States for the purpose of augmenting dam safety inspection programs and also would authorize the institution of a Federal Dam Safety Review Board. We do not believe the inspection and repair of State dams are proper Federal responsibilities. Therefore, we oppose the grants and the creation of the Federal Dam Safety Review Board, which would inspect and repair State as well as Federal dams.

A. Title VIII. We strongly oppose the proposed loan programs that would be authorized by title VIII of S. 1739. These loans would be for municipal and industrial water supply system repair, rehabilitation, expansion or improvement, or for construction of single purpose water supply systems. To expand Federal water resources agencies' roles to include massive programs such as these, when there is such concern over budget levels and the size of the Federal establishment is totally inappropriate.

While there may be a national infrastructure problem, State and local solutions are available and being used, and that the water resource aspect of infrastructure is under reasonable control. Massive Federal intervention in what is--and should remain--a local responsibility is not a logical response.

A. Title IX. We strongly oppose the provisions of title IX, which would create another Federal entity, known as the National Board of Water

Policy, with functions duplicating existing activities. While we do not disagree with some of the objectives of the proposed National Board, most of these matters are being adequately addressed by existing entities. Therefore, there is clearly no need for a new organization, particularly one of the dimensions described and with its attendant costs.

The Cabinet Council on Natural Resources and Environment is the existing and appropriate executive forum for deliberation of Federal and national water policy. It consists of Cabinet officers and other senior officials, operating under the direct agencies of the President. This forum addresses matters of water policy, issue identification, and program coordination. From within the Council, interagency work groups are formed when specific issues require additional analysis and consideration. A recent example of this was the development of the President's policy for water project cost-sharing. This approach provides total integration with existing agencies and obviates the need for another coordinating body. Indeed, title IX would relegate water policy to one more board--we are convinced that maintaining direct Presidential involvement through this own Cabinet Council is a better approach.

Title IX also addresses water resources planning policy. In March of 1983, the Administration adopted the new Principles and Guidelines to replace the old Principles and Standards which had contributed to the slowdown of water project development for several years. We believe that the new Principles and Guidelines will be effective and useful and that it is imperative that they be left in place long enough for a fair evaluation of their effectiveness.

Specific Questions

A. Section 217

1. Q. Do you have any objections to the provision of section 217?

A. No.

2. Q. Does the language of section 217 imply a Federal water permit for the use of water?

A. Although Section 217 is ambiguous we conclude that the reference means construction related permits not water use permits. The water rights, and whatever permits may be necessary to use the Missouri River water, were acquired by ETSI from the State of South Dakota and involve no Federal action.

3. Q. What Federal permits would be necessary before utilization of Missouri River water could be effectuated for coal slurry pipelines?

A. As noted above, use and diversion of water are not regulated by Federal permit, but rather are allocted ad managed under State law..

B. Section 224

5. Q. Is the condemnation of water rights supported by the Administration for the purpose of fish and wildlife mitigation?

A. The Administration opposes condemnation of water rights. It is our policy to acquire water rights needed or proposed pursuant to State water law.

D. Title IX (Water Board)

1. Q. Do you believe that your participation in the Water Policy Board will increase or decrease your effectiveness in formulating national water policy? In your view, will this Board replace the Cabinet Council designated to review water policy?

A. (a) From past experience, having a separate organization with limited capability only tended to make the whole process more tedious. The Water Council was abolished because it was deemed ineffective, and a new Board would not have the leverage the Cabinet Council has now. The Cabinet Council serves, as a successful forum for the exchange of views on policy issues.

(b) Having another center of influence will complicate policy making and it is likely that the Board would compete with but never replace the natural decision making atmosphere of the Cabinet.

4

2. Q. How would you define "Federal water and related land resources management and development plans"? (S. 1739, pp. 159-160) What would constitute a "water or related land resources project"? (S. 1739, p. 110).

A. "Federal water and related land resources management and development plans" are defined by the Principles and Guidelines as "per-or post authorization project formulation or evaluation studies undertaken by the Bureau." These studies are undertaken to alleviate problems and take advantage of opportunities in order to contribute to national economic development. Usually, these studies result in a recommended Federal action such as building a dam, managing a flood plain or conserving water. In the past, such studies have been denoted as feasibility studies. Currently, they are denoted as Secretary's Reports/Environmental Impact Statements.

3. Q. Would you consider the principles, standards, and procedures established by the board to be legally binding upon the actions of your agency?

A. Yes.

4. Q. What problems or objectives would you foresee in reimposing the principles, standards, and procedures promulgated by the Water Resources Council and in effect on March 9, 1983? What would this do to projects currently in the planning process?

A. During any change of rules or regulations it is a fact that project planning is materially affected. One cannot proceed with the planning process until the goals and rules are known. There would undoubtedly be delays in most all planning activities in process. This would be contrary to the whole intent of the legislation--to get water development back on track.

In addition the administrative and regulatory process to accomplish the seemingly insignificant action of reinstating the Principles and Standards is costly and time consuming and diverts those very same resources that could better be used in getting on with the business of providing the nation with an adequate water supply.

5. Q. Has a project proposal ever been transmitted to the Congress with a recommendation for authorization which utilized the principles and standards? How about the principles and guidelines? When was the last such submittal to the Congress?

A. (a) Yes. Two recent examples of project proposals utiiizing the Principles and Standards that are in the final stages of Administration review prior to submittal to Congress are Anderson Ranch Powerplant Third Unit and Minidoka Powerplant Rehabilitation and Enlargement.

(b) The Principles and Guidelines took effect on July 8, 1983. The first report that the Bureau completed under the Principles and Guidelines was the Lower Gunnison Basin Unit. There were twelve other reports completed between July 1983 and March 1, 1984, but these were either concluding investigations or special reports. Current project plan formulation activities are being conducted under the Principles and Guidelines.

QUESTIONS SUBMITTED BY SENATOR WALLOP

QUESTIONS FOR MR. HORN

3. Q. Section 224 of S. 1739 provides the U.S. Army Corps of Engineers with authority to acquire water, or interests in water by condemnation for projects which have not yet been started under automatic discretionary authority of the Corps up to a statutory cap of $7,500,000 per project. As you interpret these provisions:

(a) Do you believe they would in any way apply to Bureau of Reclamation projects?

A. No

(b) How do these provisions conflict with the provisions of the Northwest Power Planning Act?

A. There could be overlapping of funds or projects of the Northwest Power Planning Act.

(c) If this authority were to apply to a Bureau of Reclamation project, is there any instance is which a Federal reserved right could be claimed as a method by which water were to be obtained for fish and wildlife mitigation purposes.

A. It is possible depending on the specific project authorization or plan.

(d) Do you construe the proposed water acquisition and mitigation authority as it is presently written to allow the Federal Government to acquire minimum instream flows of water in States where the State statutes do not define minimum instream flow to be a beneficial use of water?

A. As written in section 224, it most likely does.

4. Q. Would you describe how your agencies coordinates with other agencies and State water entities to resolve water resource planning and/or conservation issues. Is the President's Cabinet Council on Resources and the Environment adequate to carry out Federal coordination of water policy issues, or is something more required? would a lower level organization be better?

A. (a) Coordination of water resource issues with other agencies and State water entities occurs at many levels depending on the nature of the issue that arises. We have agreements to meet together on an organizational or function basis at regular intervals so that lines of communication remain intack. On emerging issues we coordinate as the need arises.

(b) At the level at which the Cabinet Council operates it is quite adequate. In fact, since the decisions are made in quorum by the agency heads themselves the implementation of the decisions is direct and timely.

(c) When major issues need more technical and precise discussion the Cabinet Council forms a working group at a lower level, so this is already a mechanism used. At even lower levels there are already many forums for policy interchange and discussion. It must be realized that the lower the level in the organization the more narrow the issue that is likely to be discussed. Again the narrow issue groups are formed as needed.

5. Q. What purpose does the National Water Summary Data recently published by the U.S.G.S. play in coordinating Federal water policy?

A. The National Water Summary Data does not speak to national water policy directly. It is an objective summary of the nation's water supply and water problems identified at the State level. The data from the summary is designed to be useful to policy makers at various levels. The Summary is a centrally available body of data of accepted quality that provides a basis of consistent analysis. Some States have already found it a useful means for identifying and coordinating common problems. Additionaly, the U.S.G.S. will publish the summary annually, to assist policy makers on an on-going basis.

DEPARTMENT OF THE ARMY
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON, DC 20310

26 APR 1984

Honorable James A. McClure
Chairman
Committee on Energy and
Natural Resources
United States Senate
Washington, D. C. 20510

Dear Mr. Chairman:

The enclosed answers are in partial response to your letter of April 10, 1984, to Secretary Marsh. We will submit answers to the other questions when positions have been established.

Sincerely,

for Robert R. Dawson, Deputy,

William R. Gianelli
Assistant Secretary of the Army
(Civil Works)

Enclosures

Senator McCLURE: Please provide comments and views on Section 219 of S. 1739.

Response: This section amends the Water Research and Development Act of 1978 (PL 95-467) to establish a comprehensive research and development program on the depletion of the Ogallala Aquifer. Grants would be available to the six States within the High Plains Region - the States of Colorado, Kansas, Nebraska, New Mexico, Oklahoma, and Texas - to perform critical research. The sum of $11,000,000 is authorized annually for five years to carry out the program. Since the section would establish a new program under the jurisdiction of the Department of the Interior, we defer to the views of Interior on the merits of this section.

Senator McCLURE: Please provide comments and views on Section 224 of S. 1739.

Response: Section 224 would provide generic policy and authority for mitigation and enhancement of fish and wildlife at all Federal water resource projects. This includes those existing, under construction, and those already authorized. We oppose this provision because it is unnecessary and undesirable and because the Fish and Wildlife Coordination Act provides adequate safeguards for the preservation and enhancement of fish and wildlife. We are particularly concerned that (1) this provision might require implementation of mitigation measures without a finding of justification, (2) mitigation would have to be accomplished before the adverse impacts take place, and (3) unnecessary and unrequested general authority for water rights condemnation might be established.

Senator McCLURE: Please provide comments and views on Title VIII of S. 1739.

Response: Title VIII would establish a new program of loans to the operators of municipal water supply systems. The Corps of Engineers would be authorized to make loans for a variety of purposes including water conservation, rehabilitation of water distribution systems, improvements in water treatment systems, and expansion of water suppply. We strongly object to expansion of Federal assistance into the local water distribution area which has traditionally been supported by the sale of public bonds or by revenues from water sales. Furthermore, the repayment subsidies made possible by this title would place unacceptable additional burdens on the Federal budget.

Senator McCLURE: Please provide general comments and views on Title IX of S. 1779.

Response: Title IX of S. 1739 would establish a National Board of Water Policy and a State Advisory Committee. The Board would advise the President and Congress on water policy, review water programs, establish rules and procedures for implementing water programs, recommend priority studies and research to Federal agencies, and prepare periodic national water needs assessments. In addition, the Board would be tasked to establish principles, standards, and procedures for Federal water planning.

We strongly oppose Title IX because it is not necessary. It would create a cumbersome new agency to undertake functions that are being adequately handled now. The existing Cabinet Council on Natural Resources and Environment is a superior mechanism, flexible in operation, to address and resolve problem identification, program coordination and policy formulation in the water and related land resources area.

Nor is the requirement for promulgation of a new set of principles, standards and procedures for Federal water planning necessary. The existing Principles and Guidelines, adopted to avoid difficulties inherent in previous guidance have proved successful to date and should be applied in practice for a sufficient period to provide a full test of their effectiveness.

Senator McCLURE: With regard to Section 224, how will you determine which Corps projects "necessitate (s) the mitigation of fish and wildlife losses"? Assuming that fish and wildlife mitigation is directed in the Northwest Power Act, aren't you required by S. 1739 to proceed with all fish and wildlife measures recommended by the Northwest Power Planning Council?

Response: Justified mitigation for fish and wildlife losses has been an integral part of the Corps planning process for each project since the passage of the Fish and Wildlife Coordination Act in 1958. We would assume that justified mitigation would "necessitate" implementation when approved by the Administration and the Congress. The measures in the Northwest Power Planning Council Program provide for mitigation at existing and future hydroelectric facilities as does S.1739. S.1739 is permissive as to mitigation at existing projects and authorizes the Corps to determine or propose mitigation measures for those projects as well as future projects.

Senator McCLURE: Nationwide, how many Corps of Engineers projects are there? If the Corps spent $7.5 million on each of these projects, what would the total cost be? Who would pay these costs?

Response: There are some 2600 completed Corps projects. If $7.5 million were spent for installation of mitigation measures at each one, the total first cost would be nearly $20 billion. Much of this cost would be paid for by the Federal government in accordance with the provisions of Section 224(c).

Senator McCLURE: Section 224(b)(1) refers to the authority of the Secretary to acquire lands or water, or interests therein for mitigation purposes. Does the Secretary presently have this authority?

Response: The Secretary of the Army has this authority only to the extent specifically authorized by Congress at individual water resources projects.

Senator McCLURE: Section 224(b)(1) appears to authorize the condemnation of water rights. Do you agree with this authority? If so, what elements of value would be considered in determining the value to be compensated by the Federal Government?

Response: The Secretary of the Army does not need or want any general authority to condemn water rights for mitigation purposes at water resources projects under the Secretary's jurisdiction.

Senator McCLURE: Is the condemnation of water rights supported by the Administration for the purpose of fish and wildlife mitigation?

Response: No. We view the provision of any water rights necessary for project development to be the responsibility of the states and local interests. Issues involving water rights are extremely complicated, especially in the western states. Federal construction agencies and state and local officials must coordinate very closely on any issues involving water rights.

Senator McCLURE: To what extent are fish and wildlife mitigation measures cost-shared or reimbursed pursuant to existing law?

Response: Mitigation costs are allocated proportionally to those project purposes that generate the need for F&W mitigation measures. All costs of mitigation including constructon, lands, easements, relocations, rights-of-way, and O&M are then shared, based on existing law and policy governing cost sharing for each purpose. If the cost sharing for a particular purpose allows reimbursement, then the costs may be reimbursed as other costs.

Senator McCLURE: With regard to Section 224, please define your interpretation of the phrase "mitigation of fish and wildlife losses." Please define your interpretation of the term "project...which necessitates the mitigation of fish and wildlife losses".

Response: The phrase "mitigation of fish and wildlife losses" is interpreted to mean measures taken to reduce or replace those significant, unavoidable net losses to fish and wildlife resources that have been determined, through coordination with Federal and non-Federal agencies, to result from the construction and operation of a Corps project. The phrase "project --- which necessitates the mitigation of fish and wildlife losses" is reasonably well defined for mitigation purposes by Section 2g of the Fish and Wildlife Coordination Act. It is applied to any project for the control or use of water--- or any unit of such project.

Senator McCLURE: Section 224(d) requires the Secretary to include in his project proposals submitted to the Congress a recommended plan for fish and wildlife mitigation. How does this requirement differ from current practices?

Response: Assuming that nothing in this provision affects the Fish and Wildlife Coordination Act, this requirement is the same as the Corps' current planning and reporting procedures.

Senator McCLURE: Section 224(e), in effect, establishes cost-sharing guidelines for fish and wildlife enhancement. How do the cost-sharing requirements in this section differ from current practice?

Response: Section 224(e) cost-sharing requirements for fish and wildlife enhancement would reduce the current 75% Federal cost of enhancement to 66 2/3% when the benefits are not national and are limited to one state. In other instances when the benefits are determined to be National, the Federal share could be increased to 100% from the present 75%.

Senator McCLURE: How many Corps of Engineers hydroelectric projects have their energy marketed through the Bonneville Power Administration?

Response: There are 18 projects with a total of 21 power plants which market their energy through the Bonneville Power Administration. The 18 projects are: John Day, The Dalles, Bonneville, Lost Creek, Hills Creek, Lookout Point-Dexter, Cougar, Green Peter-Foster, Detroit-Big Cliff, Dworshak, Lower Granite, Little Goose, Lower Monumental, Ice Harbor, McNary, Libby, Albeni Falls, and Chief Joseph.

Senator McCLURE: Do you believe that your participation in the Water Policy Board will increase or decrease your effectiveness in formulating national water policy? In your view, will this Board replace the Cabinet Council designed to review water policy?

Response: The response to this question is contained in oral responses to questions by Senator Nickles. We strongly oppose enactment of Title IX which would add another layer in the process of formulating water policy. The Cabinet Council can deal much more effectively with water policy matters than could the Board which would be created by enactment of this Title.

Senator McCLURE: How would you define "Federal water and related land resources management and development plans" (S. 1739, pp. 159-160)?

Response: The preauthorization feasibility reports and the postauthorization planning reports prepared by the Corps of Engineers as part of its project planning process would be included among 'Federal water and related land resources management and development plans'. The water resource projects constructed, operated and maintained by the Corps of Engineers under its civil works authorities would constitute water or related land resources projects.

Senator McCLURE: Would you consider the principles, standards, and procedures established by the Board to be legally binding upon the actions of your agency?

Response: If the Board issued principles, standards, and procedures as rules as provided by Section 209a, such rules would be legally binding upon the Corps of Engineers planning activities.

Senator McCLURE: What problems or objectives would you foresee in reimposing the principles, standards, and procedures promulgated by the Water Resources Council and in effect on March 9, 1983? What would this do to projects currently in the planning process?

Response: Reimposing the Water Resources Council's Principles, Standards and Procedures would reinstate the inflexible planning process containing many unnecessary, arbitrary requirements. The Administration's Principles and Guidelines were adopted to eliminate the unnecessarily burdensome requirements of the old Principles, Standards and Procedures. Further planning would be required for projects that are currently in the planning process if the Water Resources Council's rules were reimposed because the current planning does not require many of the arbitrary items of the early planning process.

Senator McCLURE: Has a project proposal ever been transmitted to the Congress with a recommendation for authorization which utilized the principles and standards? How about the principles and guidelines? When was the last such submittal to the Congress?

Response: Many project proposals have been formulated under the Principles and Standards as first adopted in 1973. Since the version of the Principles and Standards in rule form was in effect only a brief period of time, it is not clear how many projects were formulated under that version of the Principles and Standards exclusively. Since the Principles and Guidelines have been in effect only since last year, it is too early for plans to have been completed under them alone. Consequently, projects now being transmitted to Congress, in each case, were formulated, in part at least, under the earlier Principles and Standards. Given the flexible nature of the Principles and Guidelines, projects formulated under the earlier procedures would be in compliance with the current planning guidelines.

Senator WALLOP: Mr. Gianelli, with respect to the new mitigation authority provided in Section 224 of S. 1739, do you feel it would enhance or complicate the ability of the Corps to carry out its water development responsibilities?

Response: The response to this question is contained in oral responses to this and related questions by Senator Wallop. We believe that enactment of Section 224 would complicate the Corps' ability to carry out its water development responsibilities.

Senator WALLOP: Is the authority to acquire water or interests in water for fish and wildlife mitigation authority the Corps presently has under any other provision of law?

Response: The Corps of Engineers presently has this authority only to the extent specifically authorized by Congress at individual water resources projects.

Senator EVANS: Do you see any potential for inconsistencies between Section 224 and the fish and wildlife program authorized by the Northwest Power Act? Please be specific.

Response: We defer to the Department of Energy on this question.

Senator EVANS: Do you plan to consult with the Northwest Power Planning Council prior to development of plans for any fish mitigation activities on the Columbia River or any of its tributaries?

Response: Yes. The Corps, in fulfilling its responsibilities under the Northwest Power Act, will consider the Council's program in developing plans for mitigation activities involving hydroelectric projects on the Columbia River and its tributaries and coordinate those activities with the Regional Council.

Senator EVANS: What is the approximate cost of fish and wildlife mitigation and enhancement work that would be done under Section 224? How does this compare with the amount that is being spent under existing law for fish mitigation at Corps of Engineers' facilities?

Response: Restudies would be required of all the completed projects, those under construction, and those authorized in order to furnish an approximate cost. Our FY 1985 budget includes mitigation first costs of $30 million and $15 million for annual O&M. It is our clear judgment, however, that costs under 224 would be significantly higher than under existing law.

Senator EVANS: What effect will Section 224 have on the responsibilities of the Corps of Engineers at existing projects for fish mitigation?

Response: The principles contained in Section 224 would be incorporated in my review of existing projects. It is impossible to calculate at this time what all the effects would be.

Senator EVANS: With regard to Section 224, who would pay for the fish and wildlife mitigation and enhancement workdone under this section? Please provide a detailed estimate of the amount that would be paid by the Federal government and the amounts that would be paid by the various project beneficiaries (e.g., hydroelectric power users, irrigators, flood control beneficiaries). Please provide a comparison of these estimated amounts and the amounts being paid under existing law.

Response: The funds for the mitigation under Section 224 would be allotted to the various project purposes and recovered in accord with the sharing in effect for each purpose. The amounts that would actually be paid in the future for mitigation by purpose are, of course, subject to cost sharing changes adopted for those purposes in this or other legislation which is enacted into law. The cost for enhancement features would be shared according to Section 224(e). It is safe to say that, except where there are signed contracts, if the mitigation and enhancement costs increase significantly, the costs to project beneficiaries will also increase.

Senator EVANS: The Northwest Power Act requires specific authorization by Congress for expenditures from the Bonneville fund for fish mitigation activities which exceed $1 million and have an estimated useful life of more than 15 years. Would specific authorization by Congress be required for the BPA to reimburse the Corps of Engineers for costs of fish mitigation activities required under Section 224 allocated to the hydroelectric power purposes, provided that those costs exceed $1 million?

Response: Section 224 apparently does not attempt to overrule or modify any requirement for congressional authorization of expenditures from the Bonneville Power Administration fund. Under present law, where Congress has authorized and provided funds for the Corps to construct fish mitigation facilities, no separate authorization is required for BPA to repay the power share to the Treasury.

Senator JOHNSTON: Section 224 establishes policies with respect to fish and wildlife mitigation and enhancement at Corps of Engineers Water projects.

(a) How does Section 224 differ from existing law? Please be specific.

Response: First, mitigation measures at projects to be constructed would have to be undertaken before losses occur -- existing law does not specify timing. Second, acquisition of land or water rights for mitigation would not have to be proposed in a report to the Congress unless mitigation costs exceed $7.5 million or condemnation is required. Third, mitigation might have to be proposed, regardless of justification, unless a determination is made that the adverse project impacts are negligible. Fourth, enhancement of any nationally important species would be at Federal cost. Presently such provisions are made at Federal cost only if supported and included as part of a Federal fish and wildlife agencies program. Fifth, mitigation authority is provided for features costing no more than $7.5 million, regardless of specific recommendations in project authorizations. Sixth, the non-Federal share of enhancement costs would increase from 25 to 33 1/3 percent when benefits are limited to a single state.

(b) Do you see any potential conflicts or inconsistencies between Section 224 and the fish and wildlife provision of the Northwest Power Act? Please be specific.

Response: We defer to the Department of Energy on this question.

(c) What is the approximate cost of the fish and wildlife mitigation and enhancement work that would be done under Section 224? How does this compare to the amount that is being spent under existing law?

Response: Restudies would be required of all the completed projects, those under construction, and those authorized in order to furnish an approximate cost. Our FY 1985 budget includes mitigation first costs of $30 million and $15 million for annual O&M. It is our clear judgment, however, that costs under Section 224 would be significantly higher than under existing law.

(d) Who would pay for the fish and wildlife mitigation and enhancement work done under this section? Please provide a detailed estimate of the amount that would be paid by the Federal government and the amounts that would be paid by the various project beneficiaries (e.g. hydroelectric power users, irrigators, flood control beneficiaries). Please also provide a comparison of these estimated amounts and the amounts being paid under existing law.

Response: It is not possible to provide estimates without restudy of the projects completed, under construction, and those authorized. In addition, we would need decisions on the unresolved conflicts between the existing and proposed legislation. We would anticipate that most of the added costs at existing projects would be Federal given the provisions of section 224(c). Under existing law, at new projects we would allocate mitigation costs to each purpose, and the amounts repaid would be in accordance with the cost sharing in effect for each purpose.

(e) What is the Administration's position with respect to this section?

Response: We are opposed to Section 224.

DEPARTMENT OF THE ARMY
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON, DC 20310

4 MAY 1984

Honorable James A. McClure
Chairman
Committee on Energy and
Natural Resources
United States Senate
Washington, D. C. 20510

Dear Mr. Chairman:

The enclosed answers are in further partial response to your letter of April 10, 1984, to Secretary Marsh. We will submit answers to the remaining questions when positions have been established.

Sincerely,

William R. Gianelli
Assistant Secretary of the Army
(Civil Works)

Enclosures

Senator McCLURE: Please provide comments and views on Section 217 of S. 1739.

Response: Section 217 makes a statement that it is the sense of Congress that pending lawsuits concerning the issuance of Federal permits for coal slurry pipeline development should be expeditiously concluded in a fair and reasonable manner. We have no objections to this provision.

Senator McCLURE: Please provide comments and views on Section 301 of S.1739.

Response: Section 301 would authorize construction of erosion control measures at Mound State Park, Moundville, Ala.; Fort Toulouse National Historic Landmark and Taskigi Indian Mound, Elmore County, Ala.; and Tangier Island, VA. I cannot support this section because we have not established the economic feasibility, nor do we have a report addressing the situation.

Senator McCLURE: Please provide comments and views on Section 314 of S.1739.

Response: Section 314 authorizes the Secretary of the Army to implement a program of research in order to demonstrate the cropland irrigation and conservation techniques described in the report issued by the New England Division Engineer, dated May 1980, for the Saint John River Basin, Maine. The section also would authorize funds to be approprated for FY's 1985, 1986, and 1987, and to remain available until expended. In his report, the division engineer recommended against further participation by the Corps of Engineers, since implementation of the program is more properly the responsibility of other Federal and State Agencies. We concur in that recommendation, and therefore oppose this section of the bill.

Senator McCLURE: Please provide comments and views on Section 316 of S. 1739.

RESPONSE: This section authorizes the Secretary of the Army to sell lands at three Corps of Engineers townsites along the Missouri River in Montana, North Dakota, and South Dakota. It provides for granting certain preferences for residents and commercial concession operators, and project-connected employees eligible to be residents, retirees who formerly lived in one of the townsites and others to exercise their preference (for 30 days) to purchase property in one of the townsites. We support disposal of these townsites but object to the subsidies which this provision offers in terms of financial assistance to purchasers and to operation of the governmental entities which would operate the townsites after disposal.

Senator McCLURE: Please provide comments and views on Section 324 of S. 1739.

Response: This section directs the Corps of Engineers to work with the South Florida Water Management District to improve water deliveries to the Everglades National Park, and authorizes the Corps to construct any necessary flood protection measures needed to protect homes near the park as a result of any modification of such water deliveries. The provisions of Section 324 were basically authorized in the FY 1984 Supplemental Appropriations Act (PL 98-181) enacted November 30, 1983; therefore, the section is superfluous.

Senator McCLURE: Please provide comments and views on Section 328 of S. 1739.

Response: This section renames the Big South Fork National Recreation Area (NRA), Tennessee and Kentucky, the John Sherman Cooper National Recreation Area. A separate bill, S. 2106, renaming the Big South Fork ...., the John Sherman Cooper National Recreation Area was introduced by Senator Baker with 27 cosponsors on November 17, 1983, and passed by the Senate on November 18. Since the NRA is part of the National Park system we defer to the Department of Interior on this provision.

Senator McCLURE: Please provide comments and views on Section 701(b)(10).

Response: Section 701(b)(10) of S.1739 would authorize the construction of the Gregory County Hydroelectric Pumped Storage Facility. In addition, this section would authorize associated multipurpose water supply and irrigation features to be undertaken concurrently by the Bureau of Reclamation. These facilities would constitute a part of the Pick-Sloan Missouri River Basin program. We would oppose authorization of this project until the Executive Branch review has been completed and a favorable recommendation is transmitted to the Congress. We defer to the Secretary of the Interior on the propriety of implementing the irrigation facilities. The current estimate for the hydroelectric facilities is $1,220,000,000.

Senator McCLURE: Please provide comments and views on Title IV of S. 1739.

RESPONSE: Title IV of S. 1739 establishes a Federal program to assist State dam safety efforts. It also establishes a Federal Dam Safety Review Board to study the need for Federal funding for non-Federal dam repair and finances a program of research into innovative dam safety inspection techniques. We strongly oppose this section because the regulatory and assistance programs that it would establish are inconsistent with our basic position that States and dam owners should undertake their own dam safety programs using resources available to them. We see no need for establishment of a Federal Dam Safety Review Board. Steps have been taken to strengthen Federal dam safety by having all agencies with responsibilities for Federal dams review their procedures and by having an interagency ad hoc committee develop management guidelines for improving dam safety. Moreover, the "Federal Guidelines for Dam Safety" recommends independent project review and various checks to assure that agencies have addressed the safety issue in their project reports. The proposed Board would be unwieldy and create doubt as to the ultimate responsibility for the safety of Federal dams.

Department of Energy
Washington, D.C. 20585

April 26, 1984

Honorable James A. McClure
Chairman
Committee on Energy
and Natural Resources
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

On April 9, 1984, Joe D. Hall, Assistant Administrator of the Western Area Power Administration, testified before the Committee on Energy and Natural Resources concerning S. 1739, Water Resources Development Act of 1983.

Following that hearing you submitted written questions for our response. We are providing responses to your general question, and Section B, questions 11 and 12; Senator Evans' questions 1, 5, and 6; and Senator Johnston's question 1.

If you have any questions, please call Ingrid Nelson or Tom Pretorius of my staff on 252-4277. They will be happy to assist you.

Sincerely,

Thomas H. Pretorius

for Robert G. Rabben
Assistant General Counsel
for Legislation

Enclosures

cc: Al Astrin

POST-HEARING QUESTIONS AND ANSWERS

RELATING TO THE

APRIL 9, 1984 HEARING

BEFORE THE

COMMITTEE ON ENERGY AND NATURAL RESOURCES

U.S. SENATE

WITNESS: JOE D. HALL

ASSISTANT ADMINISTRATOR

WESTERN AREA POWER ADMINISTRATION

QUESTIONS SUBMITTED BY SENATOR McCLURE

GENERAL QUESTIONS

Question 1: Interior/Corps/DOE. Please provide comments and views on the following provisions of S.1739; Sections 210, 216, 217, 219, 220, 224, 301, 308, 313, 314, 316, 324, 328, and 701(b)(10); Titles IV, VI, VIII, and IX.

Answer: The mission of the Department of Energy would not be affected by the provisions of sections 219, and Title VIII of S.1739.

The Department of Energy would be affected by section 224. This section will affect all of the power marketing administrations, but we defer to the Department of the Interior and the Corps of Engineers for the Administration position. Section 224 can affect their power rates under newly negotiated contracts or for projects constructed at some future time. The impact on Western Area Power Administration's power rates would be negligible if $7,500,000 of fish and wildlife mitigation costs were assessed in connection with an existing Corps of Engineers (Corps) project and passed on to the power customers, because the construction and other costs which Western is now required to recover from its customers receiving power from the Corps' projects are vastly greater than $7,500,000. The possible impact on customers receiving power from future Corps' projects cannot be assessed without knowing the actual fish and wildlife mitigation costs which the power users might be required to repay.

Both the Southeastern and Southwestern Power Administrations would experience significant increases in power rates if the mitigation

program of $7.5 million per project were approved and such sums actually expended. Southwestern's integrated system rates could increase up to approximately 7 1/2 percent. Southeastern would experience increases up to 8 to 9 percent on each of its systems.

NATIONAL BOARD OF WATER POLICY

Title IX could have an effect on the Department of Energy, especially the power marketing agencies, if it were enacted, but we defer to the Department of the Interior and the Corps of Engineers on this title.

QUESTIONS SUBMITTED BY SENATOR McCLURE

B. SECTION 224

Question 11: With the passage of the Pacific Northwest Power Act, the Congress made provision for a comprehensive program to address fish and wildlife mitigation. Is there a potential for conflict--or at least cross purpose--efforts between the Pacific Northwest Power Act program and what is proposed under S. 1739.

Answer: The Bonneville Power Administration (BPA) is a power marketing agency (PMA) of the Department of Energy (DOE). The Pacific Northwest Power Act (Power Act) is one of the organic statutes of the BPA. It could be argued that S. 1739, as a later enacted statute, would affect BPA's role in fish and wildlife protection.

At least two provisions of S. 1739 should be examined in this regard: section 224, which focuses on the mitigation and enhancement of fish and wildlife, and section 601, which establishes guidelines for the cost effectiveness determinations regarding the construction of hydroelectric power projects.

The Power Act generally provides that BPA shall use its financial resources to protect, mitigate, and enhance fish and wildlife affected by Federal hydroelectric projects in the Columbia River and its tributaries. See generally 16 U.S.C. 839b(h). BPA is guided in this effort by a fish and wildlife program prepared by a 4 State Planning Council (Council) established pursuant to the Act. Fish and wildlife issues are dealt with on a systemwide basis, in addition to the project by project approach anticipated in S. 1739.

BPA's fish and wildlife funding must "be in addition to, not in lieu of other expenditures authorized or required from other entities..."

16 U.S.C. 839b(h)(10)(A). Authorization of Corps funding for various mitigation measures could prevent BPA from independently funding measures related to Corps projects for which BPA presently has authority, until the Corps has exhausted its proposed $7.5 million spending authority.

Section 601 establishes cost effective criteria for new hydroelectric projects. The Power Act deals with the cost effectiveness issue differently and on a broader perspective, requiring consideration of quantifiable environemntal costs, and other issues. See 16 U.S.C. 839a(4) and 16 U.S.C. 839b(e). One environmental criteria which would be examined would be the project's impact on fish and wildlife. S. 1739 contains no such express requirement, although compliance with the National Environmental Policy Act would presumably include an examination of fish and wildlife impacts.

QUESTIONS SUBMITTED BY SENATOR McCLURE

B. SECTION 224

Question 12: Is there indication as to what the mitigation program authorized by S. 1739 would do to power rates in the Southeast and Southwest Power Administrations?

Answer: The mitigation program authorized by Section 224(b)(1) could raise the integrated system rates of the Southwestern Power Administration up to $6.7 million per year or approximately 7 1/2 percent. Parallel figures for systems of the Southeastern Power Administration are: $5.5 million and 9 percent for the Georgia-Alabama system; $1.0 million and 9 percent for the Kerr-Philpott system; $2.1 million and 8 percent for the Cumberland system; and $0.3 million and 8 percent for the Woodruff system.

QUESTIONS SUBMITTED BY SENATOR EVANS

SECTION 224

Question 1: Corps/DOE. Do you see any potential for inconsistencies between section 224 and the fish and wildlife program authorized by the Northwest Power Act? Please be specific.

Answer: Since the fish and wildlife program authorized by the Northwest Power Act includes measures which can be expected to be implemented by other Federal agencies as well as BPA, the authorities granted in section 224 of S. 1739 would generally serve to facilitate implementation of the program. However, certain aspects of section 224, could result in changes, inconsistent with the program.

Section 224 provides that the Secretary proposes specific fish mitigation measures. The Secretary is to consult with "appropriate Federal and non-Federal agencies." BPA is presumably an appropriate Federal agency and the Council a non-Federal agency. Under the fish and wildlife program the Council proposes specific measures.

Section 224 provides additional fish and wildlife mitigation authority to the Corps. Where the fish and wildlife program indicates that that BPA funding of a measure is appropriate and the measure falls within the additional authority granted to the Corps by section 224 BPA may lack funding authority because of the "in lieu" provision of the Northwest Power Act. 16 U.S.C. 839b(h)(10)(A).

QUESTIONS SUBMITTED BY SENATOR EVANS

FISH AND WILDLIFE MITIGATION AND ENHANCEMENT

Question 5: DOE. Who would pay for the fish and wildlife mitigation and enhancement work done under this section? Please provide a detailed estimate of the amount that would be paid by the Federal Government and the amounts that would be paid by the various project beneficiaries (e.g. hydroelectric power users, irrigators, flood control beneficiaries). Please provide a comparison of these estimated amounts and the amounts being paid under existing law.

Answer: Customers of the five power administrations and Federal taxpayers would pay the mitigation costs of up to $7,500,000 for each project which would be authorized by section 224, depending upon the allocation of costs among the existing pruposes of each project. A detailed analysis, project by project, could be provided but would require considerable calculations and considerable time. It would appear that the greatest impact of this provision would be on the three smallest power administrations.

Assuming that the full amount of $7,500,000 would be spent on each of the Corps of Engineers projects which have hydroelectric power facilities and assuming that a similar amount might be made available for both projects in Alaska, fish mitigation at each of the two projects would increase Eklutna project investment by 25.7 percent and Snettisham by 9.4 percent. Inasmuch as the costs are allocated 100 percent to power, the power users would repay all such costs causing considerably higher rates. However, there are no known mitigation problems associated with either project and the State of Alaska has already constructed fish hatcheries at both sites for fish

enhancement purposes. The expenditure of additional funds for fish mitigation at the Alaska projects would therefore appear to be both unnecessary and inappropriate.

For the 22 projects for which the Southeastern Power Administration markets power, the cost of mitigation would be borne primarily by the power users, who, if all $7,500,000 were spent at each project, would pay a total of $102,645,000 of the $165 million. The rest, $62,355,000, would be borne by the general taxpayers, for the other costs are non-reimbursable.

For the Southwestern Power Administration, the costs of mitigation at its 23 projects would be borne primarily by the general taxpayers of the nation. The power users would pay $67,103,000 of the $172,500,000.

Under existing law, project costs have been allocated to fish and wildlife purposes as follows:

Alaska Power Administration	$ 0
Southeastern Power Administration	$13,483,000
Southwestern Power Administration	$ 9,316,000

QUESTIONS SUBMITTED BY SENATOR EVANS

Question 6: Corps/DOE. The Northwest Power Act requires specific authorization by Congress for expenditures from the Bonneville fund for fish mitigation activities which exceed $1 million and have an estimated useful life of more than 15 years. Would specific authorization by Congress be required for the BPA to reimburse the Corps of Engineers for costs of fish mitigation activities required under section 224 allocated to the hydroelectric power purposes, provided that those costs exceed $1 million.

Answer: Where Congress has authorized and provided funds for the Corps to construct fish mitigation f°cilities, no separate Congressional authorization is required for BPA to repay the power share of those facilities to the Treasury. The Power Act did not envision such additional authorization in these instances, although BPA is required to reflect such amounts in its annual budget.

QUESTIONS FROM SENATOR JOHNSTON

Question 1: Do you see any potential conflicts or inconsistencies between section 224 and the fish and wildlife provisions of the Northwest Power Act?

Answer: Since the fish and wildlife program authorized by the Northwest Power Act includes measures which can be expected to be implemented by other Federal agencies as well as BPA, the authorities granted in section 224 of S. 1739 would generally serve to facilitate implementation of the program. However, certain aspects of section 224, could result in changes, inconsistent with the program.

Section 224 provides that the Secretary proposes specific fish mitigation measures. The Secretary is to consult with "appropriate Federal and non-Federal agencies." BPA is presumably an appropriate Federal agency and the Council a non-Federal agency. Under the fish and wildlife program the Council proposes specific measures.

Section 224 provides additional fish and wildlife mitigation authority to the Corps. Where the fish and wildlife program indicates that that BPA funding of a measure is appropriate and the measure falls within the additional authority granted to the Corps by section 224 BPA may lack funding authority because of the "in lieu" provision of the Northwest Power Act. 16 U.S.C. 839b(h)(10)(A).

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United States Senate
COMMITTEE ON
ENERGY AND NATURAL RESOURCES
WASHINGTON, D.C. 20510

April 10, 1984

The Honorable Donald Paul Hodel
Secretary
Department of Energy
1000 Independence Avenue S.W.
Washington, D.C. 29585

Dear Mr. Secretary:

Enclosed for your attention are additional questions posed by Members of the Committee on Energy and Natural Resources in follow-up to the hearing held April 9, 1984 to take testimony on the proposed Water Resources Development Act of 1983.

Because of the strict time constraint placed upon the Committee's consideration of the bill, I would greatly appreciate receiving your responses for inclusion in the hearing record by the close of business on April 16, 1984.

Thank you for your assistance and consideration.

Sincerely,

James A. McClure

James A. McClure
Chairman

McC/dar
Enclosure

QUESTIONS SUBMITTED BY SENATOR McCLURE

The following questions are submitted for response by the Department of the Interior, the Department of the Army, and/or the Department of Energy. Each question is proceeded by a notation of "Interior", "Corps", or "DOE" indicating the intended respondee(s).

General Questions:

Interior/Corps/DOE: Please provide comments and views on the following provisions of S. 1739: Sections 210, 216, 217, 219, 220, 224, 301, 308, 313, 314, 316, 324, 328, 701(b)(10), Titles IV, VI, VIII, and IX.

Specific Questions:

A. Section 217

1. Interior/Corps: Do you have any objections to the provision of section 217?

2. Interior/Corps: Does the language of Section 217 imply a Federal water permit for the use of water?

3. Interior/Corps: What Federal permits would be necessary before utilization of Missouri River water could be effectuated for coal slurry pipelines?

B. Section 224

1. Corps: How will you determine which Corps projects "necessitate(s) the mitigation of fish and wildlife losses"? Assuming that fish and wildlife mitigation is directed in the Northwest Power Act, aren't you required by S. 1739 to proceed with all fish and wildlife measures recommended by the Northwest Power Planning Council?

2. Corps: Nationwide, how many Corps of Engineers projects are there? If the Corps spent $7.5 million on each of these projects, what would the total cost be? Who would pay these costs?

3. Corps: Section 224(b)(1) refers to the authority of the Secretary to acquire lands or water, or interests therein for mitigation purposes. Does the Secretary presently have this authority?

4. Corps: Section 224(b)(1) appears to authorize the condemnation of water rights. Do you agree with this authority? If so, what elements of value would be considered in determining the value to be compenstated by the Federal Government?

5. Corps/Interior: Is the condemnation of water rights supported by the Administration for the purpose of fish and wildlife mitigation?

6. Corps: To what extent are fish and wildlife mitigation measures cost-shared or reimbursed pursuant to existing law?

7. Corps: Please define your interpretation of the phrase "mitigation of fish and wildlife losses". Please define your interpretation of the term "protect...which neccessitates the mitigation of fish and wildlife losses".

8. Corps: Section 224(d) requires the Secretary to include in his project proposals submitted to the Congress a recommended plan for fish and wildlife mitigation.

   How does this requirement differ from current practices?

9. Corps: Section 224(d) in effect, establishes cost-sharing guidelines for fish and wildlife enhancement.

   How do the cost-sharing requirements in this section differ from current practice?

10. Corps: How many Corps of Engineers hydroelectric projects have their energy marketed through the Bonneville Power Administration?

11. DOE: With passage of the Pacific Northwest Power Act, the Congress made provision for a comprehensive program to address fish and wildife mitigation.

    Is there potential for conflict -- or at least cross purpose -- efforts between the Pacific Northwest Power Act program and what is proposed under S. 1739?

12. DOE: Is there indication as to what the mitigation program authorized by S. 1739 would do to power rates in the Southeast and Southwest Power Administrations?

C. Title VI

1. Interior: Are the cost-sharing requirements of Title VI applicable to Bureau of Reclamation projects, in your view? Is it absolutely clear that any cost-sharing under Title VI is subject to the irrigator's "ability to pay" as established under current reclamation law? Do you have any recommendation for a substitute for Title VI, in lieu of your recommendation to strike the title? How do the cost-sharing requirements of Title VI conflict with those of existing law related to Bureau of Reclamation projects?

Title VI (continued)

2. Interior/Corps: Based upon the last full paragraph on p. 54 of the Environment and Public Works Committee report, do you believe that Federal projects may go forward after there is a demonstrated inability to pay? Isn't is true that "ability to pay" calculations should be made in every case rather "infrequently" as described in the Committee report?

3. Interior/Corps: Do you have any objection to an absolute requirement that 5% of the non-Federal share shall be in cash? Can you give a rationale for exempting urban and rural flood protection benefits from the 5% cash requirement?

4. Interior: What effect would this legislation (Title VI) have on the Dam Safety program as currently authorized? As proposed to be amended by the House passed bill?

5. Interior/Corps: Do you believe that the provisions of Title VI will promote or inhibit the development of water resources in the United States?

6. Interior: Title VI appears to authorize reallocation of project costs between beneficiaries. It has been the custom of this Committee and the Congress to allow a limited amount of reallocation for specific project costs. That is, in the case of irrigation repayment, some costs may be repaid by hydropower revenues or municipal and industrial water users.

   In your interpretation of Title VI, would it be possible to reallocate any project cost to other beneficiaries?

7. Interior: What is the current requirement for repayment of recreation costs? What would the inclusion of 50% of separable costs do to the abilities of local sponsors to participate in project related recreation development?

8. Interior: What is the difference between the interest rate established in S. 1739 and current practice?

9. Interior/DOE: Section 601(a)(1) authorizes the appropriate Power Marketing Administrator to accept funds for later transfer to the Federal agency constructing the (hydropower) project. Please comment as to the advisability of having this authority in the PMA rather than the constructing agency.

10. DOE: Section 601(a)(1) provides that the appropriate PMA would, in effect, determine whether or not a hydropower project was economically feasible.

    What is the view of the Department(s) as to the necessity for such a determination in the case of projects financed by non-Federal contributions?

D. Title IX (Water Board)

1. Interior/Corps: Do you believe that your participation in the Water Policy Board will increase or decrease your effectiveness in formulating national water policy? In your view, will this Board replace the Cabinet Council designated to review water policy?

2. Interior/Corps: How would you define "Federal water and related land resources management and development plans"? (S. 1739, pp. 159-160) What would constitute a "water or related land resources project"? (S. 1739, p. 110).

3. Interior/Corps: Would you consider the principles, standards, and procedures established by the Board to be legally binding upon the actions of your agency?

4. Interior/Corps: What problems or objectives would you foresee in reimposing the principles, standards, and procedures promulgated by the Water Resources Council and in effect on March 9, 1983? What would this do to projects currently in the planning process?

5. Interior/Corps: Has a project proposal ever been transmitted to the Congress with a recommendation for authorization which utilized the principles and standards? How about the principles and guidelines? When was the last such submittal to the Congress?

QUESTIONS SUBMITTED BY SENATOR WALLOP

QUESTIONS FOR MR. HORN

1. How would the requirement for flood control cost sharing as proposed in Title VI of S. 1739 affect the Bureau of Reclamation projects?

2. Do you construe the cost sharing provisions in Title VI of S. 1739 to be a statutory minimum, or do you think Bureau of Reclamation projects would be governed by ability to pay criterion. What about the proposed cost sharing provisions for flood control?

3. Section 224 of S. 1739 provides the U.S. Army Corps of Engineers with authority to acquire water, or interests in water by condemnation for projects which have not yet been started under automatic discretionary authority of the Corps up to a statutory cap of $7,500,000 per project. As you interpret these provisions:

   (a) Do you believe they would in any way apply to Bureau of Reclamation projects?

   (b) How do these provisions conflict with the provisions of the Northwest Power Planning Act?

   (c) If this authority were to apply to a Bureau of Reclamation project, is there any instance is which a Federal reserved right could be claimed as a method by which water were to be obtained for fish and wildlife mitigation purposes.

   (d) Do you construe the proposed water acquisition and mitigation authority as it is presently written to allow the federal government to acquire minimum instream flows of water in states wherein the state statutes do not define minimum instream flow to be a beneficial use of water?

4. Would you describe how your agencies coordinates with other agencies and state water entities to resolve water resource planning and/or conservation issues. Is the President's Cabint Council on Resources and the Environment adequate to carry out federal coordination of water policy issues, or is something more required? Would a lower level organization be better?

5. What purpose does the National Water Summary Data recently published by the U.S.G.S. play in coordinating federal water policy?

QUESTIONS FOR Mr. GIANELLI, Assistant Secretary for Civil Works

1. Mr. Gianelli, with respect to the new mitigation authority provided in Section 224 of S. 1739, do you feel it would enhance, or complicate the ability of the Corps to carry out its water development responsibilities?

2. Is the authority to acquire water or interests in water for fish and wildlife mitigation authority the Corps presently has under any other provision of law?

3. Can the Corps presently condemn water rights to obtain interests in water for a Corps project?

4. Must state water law be followed in aquiring water for most Corps projects in prior appropriation doctrine states?

5. When Corps water resource projects, by their nature, effect the timing of flows in a river system and thereby do injury to private water or other property rights, is the federal government required to provide compensation, and if so, under what circumstances and what formula designates the value of water rights?

6. Does the project design for Corps projects where inter-basin transfers of water are involved take into account interstate compacts, or Supreme Court allocations of water?

7. If Section 1 of the Flood Control Act of 1944 subordinates the use of water for navigation purposes to beneficial consumptive uses of the streams in western states, in your opinion would additional language requiring the Corps to follow State water law in acquiring water for fish and wildlife mitigation purposes facilitate water resource projects in prior appropriation doctrine states?

QUESTIONS SUBMITTED BY SENATOR EVANS

Section 224

1. Corps/DOE: Do you see any potential for inconsistencies between Section 224 and the fish and wildlife program authoirzed by the Northwest Power Act? Please be specific.

2. Corps: Do you plan to consult with the Northwest Power Planning Council prior to development of plans for any fish mitigation activities on the Columbia River or any of its tributaries?

3. Corps: What is the approximate cost of fish and wildlife mitigation and enhancement work that would be done under Section 224? How does this compare with the amount that is being spent under existing law for fish mitigation at Corps of Engineers' facilities?

4. Corps: What effect will Section 224 have on the responsibilities of the Corps of Engineers at existing projects for fish mitigation?

5. Corps/DOE: Who would pay for the fish and wildlife mitigation and enhancement work done under this section? Please provide a detailed estimate of the amount that would be paid by the Federal government and the amounts that would be paid by the various project beneficiaries (e.g., hydroelectric power users, irrigators, flood control beneficiaries). Please provide a comparison of these estimated amounts and the amounts being paid under existing law.

6. Corps/DOE: The Northwest Power Act requires specific authorzation by Congress for expenditures from the Bonneville fund for fish mitigation activities which exceed $1 million and have an estimated useful life of more than 15 years. Would specific authorization by Congress be required for the BPA to reimburse the Corps of Engineers for costs of fish mitigation activities required under Section 224 allocated to the hydroelectric power purposes, provided that those costs exceed $1 million?

Section 601 (Cost-sharing)

1. Interior: What effect would Section 601 have on the responsibilities under existing law for cost-sharing by agricultural water users?

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United States Senate
COMMITTEE ON
ENERGY AND NATURAL RESOURCES
WASHINGTON, D.C. 20510

April 11, 1984

The Honorable Donald Paul Hodel
Secretary
Department of Energy
1000 Independence Avenue S.W.
Room 7A257
Washington, D.C. 29585

Dear Mr. Secretary:

Enclosed for your attention are additional questions posed by Members of the Committee on Energy and Natural Resources in follow-up to the hearing held April 9, 1984 to take testimony on the proposed Water Resources Development Act of 1983.

Because of the strict time constraint placed upon the Committee's consideration of the bill, I would greatly appreciate receiving your responses for inclusion in the hearing record by the close of business on April 16, 1984.

Thank you for your assistance and consideration.

Sincerely,

James A. McClure

James A. McClure
Chairman

McC/dar
Enclosure

QUESTIONS FOR ASSISTANT ADMINISTRATOR HALL FROM SENATOR JOHNSTON
REGARDING S.1739

1. Do you see any potential conflicts or inconsistencies between section 224 and the fish and wildlife provisions of the Northwest Power Act?

2. Section 601(a)(1) establishes policies with respect to hydroelectric power development.

(a) How does this provision differ from existing law? Please be specific.

(b) What is the Administration's position with respect to this provision?